
EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No.
97-cv-3496 (DRD) (MAS)

WALSH SECURITIES, INC., :

Plaintiff, :

vs. :

DEPOSITION OF:
ROBERT AGEL

CRISTO PROPERTY MANAGEMENT,
LTD., a/k/a G.J.L. LIMITED;
OAKWOOD PROPERTIES, INC.;
NATIONAL HOME FUNDING, INC.;
CAPITAL ASSETS PROPERTY
MANAGEMENT & INVESTMENT CO.,
INC.; CAPITAL ASSETS PROPERTY
MANAGEMENT, L.L.C.; WILLIAM
KANE; GARY GRIESER; ROBERT
SKOWRENSKI, II; RICHARD CALANNI;
RICHARD DiBENEDETTO; JAMES R.
BROWN; THOMAS BRODO; ROLAND
PIERSON; STANLEY YACKER, ESQ.;
MICHAEL ALFIERI, ESQ.; RICHARD
PEPSNY, ESQ.; ANTHONY M.
CICALESE, ESQ.; LAWRENCE CUZZI;
ANTHONY D'APOLITO; DAP CONSULTING,
INC.; COMMONWEALTH LAND TITLE
INSURANCE CO.; NATIONS TITLE
INSURANCE OF NEW YORK, INC.;
FIDELITY NATIONAL TITLE
INSURANCE CO. OF NEW YORK;
COASTAL TITLE AGENCY; DONNA
PEPSNY; WEICHERT REALTORS; and
VECCHIO REALTY, INC., D/B/A
MURPHY REALTY BETTER HOMES
And GARDENS :

Defendants. :

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212-267-6868

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<p style="text-align: right;">Page 2</p> <p>1 TRANSCRIPT of the stenographic notes of</p> <p>2 the proceedings in the above-entitled matter, as</p> <p>3 taken by and before JANET BAILYN, a Certified</p> <p>4 Shorthand Reporter and Notary Public of the State of</p> <p>5 New Jersey, held at the office of MANNING, CALIENDO &</p> <p>6 THOMSON, 36 West Main Street, Freehold, New Jersey,</p> <p>7 on June 23, 2010, commencing at 10:10 in the</p> <p>8 forenoon.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS DIRECT CROSS REDIRECT RECROSS</p> <p>4 ROBERT AGEL</p> <p>5 BY MR. MAGNANINI 5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 NUMBER DESCRIPTION PAGE</p> <p>9</p> <p>10 Coastal-1 Rule 26 Disclosures 69</p> <p>11 Coastal-2 Stipulation of Dismissal</p> <p>12 with Prejudice 74</p> <p>13 Coastal-3 Stipulation of Dismissal</p> <p>14 with Prejudice 74</p> <p>15 Coastal-4 Answer to Fourth Amended Complaint 80</p> <p>16 Coastal-5 Plaintiffs' First Request for</p> <p>17 Production of Documents to</p> <p>18 Defendant Coastal Title Agency 83</p> <p>19 Coastal-6 Fidelity Agency Agreement 127</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 STONE & MAGNANINI, LLP</p> <p>4 BY: ROBERT MAGNANINI, ESQ.</p> <p>5 AMY WALKER WAGNER, ESQ.</p> <p>6 150 John F. Kennedy Parkway</p> <p>7 Short Hills, New Jersey 07078</p> <p>8 Attorneys for Plaintiff</p> <p>9</p> <p>10 McCARTER & ENGLISH, LLP</p> <p>11 BY: DAVID R. KOTT, ESQ.</p> <p>12 Four Gateway Center</p> <p>13 100 Mulberry Street</p> <p>14 Newark, New Jersey 07102-4056</p> <p>15 Attorneys for Defendant</p> <p>16 Commonwealth Land Title Insurance Co.</p> <p>17</p> <p>18 FOX ROTHSCHILD, LLP</p> <p>19 BY: EDWARD J. HAYES, ESQ.</p> <p>20 2000 Market Street</p> <p>21 Philadelphia, Pennsylvania 19103-3222</p> <p>22 Attorneys for Defendants Nations Title</p> <p>23 Insurance of New York, Inc. and Fidelity</p> <p>24 National Title Insurance Co. of New York</p> <p>25</p> <p>1 MANNING, CALIENDO & THOMSON, P.A.</p> <p>2 BY: VINCENT P. MANNING, ESQ.</p> <p>3 36 West Main Street</p> <p>4 Freehold, New Jersey 07728</p> <p>5 Attorneys for National Home Funding</p> <p>6 And Robert Skowrenski</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 ROBERT A G E L, having been duly sworn by the</p> <p>2 Notary, testified as follows:</p> <p>3 DIRECT EXAMINATION BY MR. MAGNANINI:</p> <p>4 Q. Good morning, Mr. Agel, how are you?</p> <p>5 A. Good morning. Fine thanks.</p> <p>6 Q. My name is Bob Magnanini. I'm an</p> <p>7 attorney at a law firm called Stone & Magnanini, and</p> <p>8 we represent the plaintiff, Walsh Securities,</p> <p>9 Incorporated, in this case, which as you know started</p> <p>10 in 1997. So we're deposing you today.</p> <p>11 As I told you, due to a personal</p> <p>12 commitment I will have to leave at three, and we will</p> <p>13 pick it up when it's convenient for you, but you're</p> <p>14 appearing in your corporate representative capacity.</p> <p>15 So you understand what that is?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Have you ever been deposed before?</p> <p>18 A. Yes.</p> <p>19 Q. How many times?</p> <p>20 A. A half a dozen at least.</p> <p>21 Q. You're familiar then with the rules?</p> <p>22 A. Yes.</p> <p>23 Q. I'll just give you a few highlights.</p> <p>24 It's your deposition so any time you want to take a</p> <p>25 break, you know, just let me know and we will. I</p>

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<p style="text-align: right;">Page 6</p> <p>1 would ask you if a question is pending to answer it 2 unless it concerns a privilege or something like 3 that. Then you and Mr. McGowan are welcome to step 4 out. 5 And then I guess the three biggest 6 things are: Once I finish talking, then you can 7 start talking, and then I'll let you talk because the 8 court reporter can't transcribe the both of us. And 9 then if you answer one of my questions I will assume 10 you understand it. If you don't understand it, which 11 is more likely as the day goes on, please let me know 12 and we will rephrase it or ask it a different way. 13 And then is there any reason you can't answer 14 questions today truthfully? 15 A. No. 16 Q. Okay. That's the old: Are you under 17 the influence of any drugs or alcohol that they used 18 to ask, which I have only had once in my short 19 career. 20 When was Coastal Title founded? 21 A. 1987. 22 Q. And who were the founders? 23 A. Myself and a gentleman name Matthew 24 Maguire, M-a-g-u-i-r-e. 25 Q. And does Mr. Maguire still work at</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. McGOWAN: Presently? 2 MR. MAGNANINI: Presently. 3 A. Roughly ten. 4 Q. Did Coastal have the same number of 5 employees -- the time frame we're looking at is 1996 6 through the middle of 1997 for the lawsuit so I'll 7 keep referring back to that. 8 A. Probably a little more then. I couldn't 9 tell you exactly, it's a long time ago, but it's 10 probably a little more. 11 Q. And how is Coastal organized as a 12 business? Do you have departments? 13 A. Not really, it's too small, it's too 14 small. Everyone is cross-trained. 15 Q. And your position, president, and then 16 Mr. O'Connell is the vice president. Who else do you 17 have in management positions? 18 MR. McGOWAN: Presently? 19 Q. Presently. 20 A. Presently I have one office manager. 21 Q. And then in 1996, '97 time frame how 22 many management positions did Coastal have? 23 A. Just one. That would be me. 24 Q. Just you. Okay. And then who were the 25 employees of Coastal in '96 and '97?</p>
<p style="text-align: right;">Page 7</p> <p>1 Coastal Title? 2 A. No. 3 Q. When did he leave? 4 A. Around 2004. Around 2004. 5 Q. What type of entity is Coastal Title 6 Agency? 7 A. Corporation. 8 Q. A New Jersey corporation? 9 A. Yes. 10 Q. And who are its officers? 11 A. Myself and Michael O'Connell. 12 Q. What is your position as an officer? 13 A. I'm the president. 14 Q. And what about Mr. O'Connell? 15 A. Vice president. 16 Q. Do you have any other officers? 17 A. No. 18 Q. Who are the directors of Coastal? 19 A. Same two. 20 Q. And then who are the shareholders? 21 A. Same two. 22 Q. A 50/50 split? 23 A. Yes. 24 Q. How many employees does Coastal 25 currently have?</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Wow. 2 MR. McGOWAN: You can do that, can't 3 you? 4 A. Well, I can tell you myself, Michael 5 O'Connell, Matthew Maguire. 6 Q. What was Mr. Maguire's role? 7 A. Sales. 8 Q. Do you recall anyone else? 9 A. A Sally Zappola. At that time it would 10 have been Casalese, her name. 11 Q. Does she still work at Coastal? 12 A. No. 13 Q. What was her position? 14 A. Administrative. 15 Q. Who dealt with the closing attorneys or 16 the requests for title insurance or title commitments 17 that you would receive? 18 A. Mostly me. 19 Q. Anyone else in the '96, '97 time frame? 20 A. During that time frame Sally would have 21 done some of that. 22 Q. Is Coastal licensed by any entity? 23 A. Yes. 24 Q. By whom? 25 A. New Jersey Department of Insurance.</p>

3 (Pages 6 to 9)

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<p style="text-align: right;">Page 10</p> <p>1 Q. What type of license or licenses does 2 the agency hold? 3 A. It's called a producer's license. 4 Q. And is that for the agency or for 5 yourself? 6 A. There's one for the agency and then I'm 7 licensed as well. 8 Q. Anyone else in Coastal licensed? 9 A. Yes. O'Connell, Maguire was at the 10 time, and Sally would have been. 11 Q. Anyone else that you know back then? 12 A. Back then? Probably not. 13 Q. I think we understood, and we may be 14 wrong, that Sally Zappola was a title officer? 15 A. Uh-huh. 16 Q. What does that position entail? 17 A. You examine titles, you prepare title 18 commitments, review title policies. 19 Q. Do you know if she ever worked with 20 requests from Cristo Properties or William Kane? 21 A. She did work on those files, I can tell 22 you that, but she had no dealings directly with them. 23 Q. Did Lorraine King ever work for 24 Coastal -- 25 A. No.</p>	<p style="text-align: right;">Page 12</p> <p>1 with Commonwealth? 2 A. It was probably around 1998, shortly 3 after this all broke. 4 Q. And why was the business relationship 5 terminated? 6 MR. KOTT: Object to the form. 7 A. A representative of -- just, you know, a 8 sales rep for Commonwealth I believe left 9 Commonwealth and went to Lawyers and we went with 10 him. 11 Q. You said that Nations was a predecessor 12 of Fidelity? 13 A. Uh-huh. 14 Q. Was there a time when you stopped -- by 15 you, I mean Coastal stopped doing business with 16 Fidelity? 17 A. Yes. 18 Q. And when was that? 19 A. You know, I don't recall the date. 20 We -- I am pretty sure we stayed with Fidelity for a 21 little while after this all happened, but I don't 22 recall exactly how long. We went probably another 23 year at least. 24 Q. Why was that relationship terminated? 25 A. I believe because of this claim.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. -- as an independent contractor? 2 A. No. 3 Q. What title insurance companies did 4 Coastal -- I don't know how you say it -- work with, 5 represent in the '96, '97 time frame? 6 A. It would have been Commonwealth probably 7 and Fidelity. I don't recall if we had started 8 working with Lawyer's Title at that point. 9 Q. Do you recall if Coastal worked with 10 Nations Title Insurance Company? 11 A. Yes, that was a predecessor to Fidelity. 12 Q. So basically just two title insurance 13 entities? 14 A. Correct. 15 Q. What title insurance companies does 16 Coastal work with currently? 17 A. Lawyer's Title and First American Title. 18 MR. McGOWAN: Lawyers and what? 19 THE WITNESS: First American. 20 Q. Who owns Lawyer's Title Insurance? 21 A. Currently it's Fidelity National Title. 22 Q. And First American is an independent 23 entity? 24 A. Independent publicly traded company. 25 Q. When did Coastal cease doing business</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Why do you believe that, Mr. Agel? 2 A. You know, conversations that I had with 3 people at Fidelity after we left. It was -- they had 4 said it was the claims. We only really had one. 5 Q. Who were the conversations with at 6 Fidelity, if you recall? 7 A. Wow. Because I didn't do that much 8 business with them, I can tell you people that work 9 there, but it's possible who it was. Possibly an Ed 10 Norton, possibly Kevin Carins, C-a-r-i-n-s. That's 11 possible. I don't remember who else was there. 12 Q. Do you remember Mr. Norton's or Mr. 13 Carins' positions at Fidelity? 14 A. They were state counsel. 15 Q. For the record, what does state counsel 16 do? 17 A. It's an in-house counsel. They're an 18 attorney that handles underwriting questions, things 19 like that. 20 Q. When did you begin working with Lawyer's 21 Title? 22 A. Probably around 1998. 23 Q. And when did Coastal begin working with 24 First American? 25 A. Probably mid 2000s, maybe.</p>

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1 Q. Much more recent?
 2 A. Yes, yes.
 3 Q. Back in '96 and '97 when you were
 4 working with -- when Coastal was working with both
 5 Commonwealth and either Nations or Fidelity, how did
 6 Coastal decide which title company to use to insure
 7 any given loan?
 8 A. Simple. Every other one. There was
 9 no -- the only time I pick an underwriter is if it's
 10 a large commercial transaction. Residentials are
 11 split 50/50.
 12 Q. Again, this is back in '96, '97, how did
 13 Coastal find its insureds?
 14 A. Excuse me?
 15 Q. I don't know if it's a proper question.
 16 I mean Coastal was in the insurance business.
 17 A. Right.
 18 Q. How did you obtain clients for which to
 19 get title insurance or closing protection letters or
 20 title commitments, whatever you were going to do?
 21 A. We had sales reps on the road and
 22 myself, I did it.
 23 Q. Who did either you or the sales reps
 24 speak with or meet with?
 25 A. You would solicit the attorneys

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1 themselves or you would go to, you know, their
 2 paralegals. Depends on who controls where the work
 3 goes.
 4 Q. Where the work goes. Okay. And what
 5 geographic area did Coastal operate in, again, back
 6 in '96, '97?
 7 A. All 21 counties.
 8 Q. So throughout the entire state?
 9 A. Yes.
 10 Q. Did you receive a majority of your work
 11 from one county?
 12 A. Yeah, you would say most of it would be
 13 Monmouth, Ocean, Middlesex. In your general
 14 geographic area.
 15 Q. Your backyard?
 16 A. Yes.
 17 Q. When we were deposing Mr. Yacker -- let
 18 me ask you first: Do you know who Stanley Yacker is?
 19 A. Yes.
 20 Q. So when we deposed him he had said that
 21 he generally used Monmouth Title Agency, but then as
 22 we know on a series of these loans he was using
 23 Coastal Title Agency. How did -- did you have any
 24 conversations with -- and this is you personally
 25 first, have conversations with Mr. Yacker to give the

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1 business to Coastal or how did that occur?
 2 A. No, I did not. That came in really more
 3 from -- I guess through Pepsny's office. They would
 4 order the original title commitment for when Cristo
 5 or whatever company it was was buying the property
 6 and then they would -- then the order would come in
 7 from Yacker after they got a buyer.
 8 Q. Okay.
 9 A. It's not uncommon for a title company to
 10 get orders from strange attorneys because they have
 11 back title.
 12 Q. Because you've already done the title
 13 work on the first loan?
 14 A. Right.
 15 Q. And I guess Mr. Alfieri, do you know
 16 Michael Alfieri?
 17 A. Yes.
 18 Q. I believe you testified that he had a
 19 relationship with Coastal Title?
 20 A. Yes.
 21 Q. And so do you still do work with Mr.
 22 Alfieri?
 23 A. No.
 24 Q. Do you still do work with Mr. Pepsny?
 25 A. No.

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1 Q. Assuming since Mr. Yacker doesn't
 2 practice I don't assume --
 3 A. Correct.
 4 Q. And have you ever -- I guess I will just
 5 ask: When was the last time you did any work with
 6 Mr. Anthony Cicalese?
 7 A. Back in around 1996 or 7, whenever this
 8 whole case broke.
 9 Q. I guess as a background question,
 10 probably the easiest thing, can you explain to me how
 11 title insurance is ordered?
 12 A. Any number of ways. We get orders
 13 through the mail, we get orders over the telephone,
 14 over the fax machine, today we get them via e-mail,
 15 off the website.
 16 Q. Who would they come from?
 17 A. Then I would say 95 percent of them or
 18 more would come from an attorney.
 19 Q. So back in 1996, '97, on the loans at
 20 issue in this litigation, did they come from Mr.
 21 Pepsny or from someone else in his office?
 22 A. No, it would have come from Pepsny. I
 23 mean, that would be what we consider our contact.
 24 Q. Do you recall if he had any paralegal or
 25 administrators?

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1 A. He had girls working for him. I don't
2 recall who they were.
3 Q. Okay. Did you ever receive any requests
4 from Mr. Alfieri for title insurance for the
5 properties at issue in this case?
6 A. I don't think so. I don't think he ever
7 represented people. He had his finance business,
8 company that -- Selective Finance I think was the
9 name of the business that did loan some money. I
10 remember insuring a couple of loans for -- on
11 properties that Cristo or Kane owned. That was the
12 only time I had any involvement with Michael Alfieri.
13 Q. And then who at Mr. Yacker's office
14 would contact Coastal?
15 A. Lory King. Very rarely spoke to Yacker.
16 Q. And then what about at Mr. Cicalese's
17 office?
18 A. You know, he came in towards the end and
19 I don't recall at all. I don't think he did a lot of
20 these.
21 Q. Have you ever met Mr. Cicalese?
22 A. No.
23 Q. Did you ever speak to him on the phone?
24 A. Possibly.
25 Q. Do you know if Lory King made requests

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1 on behalf of Mr. Cicalese?
2 A. That I don't recall.
3 Q. Okay. I assume -- have you met Lory
4 King?
5 A. It's possible, yes, maybe once or twice
6 she might have stopped in the office.
7 Q. Do you recall speaking to her on the
8 phone?
9 A. Yes.
10 Q. Okay. And during that time who was her
11 -- who did she primarily call at Coastal?
12 A. Pretty much me or with simple things she
13 would call Sally. Just looking for an endorsement to
14 change, say, a mortgage amount or something.
15 Q. Sally was more administrative?
16 A. She handled -- she was a title officer
17 but she handled kind of rudimentary tasks, not
18 complicated title stuff.
19 Q. And then -- and so I don't know how you
20 would phrase it in your company, but the sales
21 contact for Yacker was you personally?
22 A. You know, we never had sales contact
23 with Yacker. I did have sales reps over the years
24 prior going in and trying to get work from him but he
25 always had that relationship with Monmouth Title. So

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1 I would have been the contact, but there was not a
2 lot of contact.
3 Q. And then how about with -- was there a
4 contact person for Cicalese?
5 A. No.
6 Q. And so how did the work from Cicalese
7 come into Coastal Title?
8 A. Probably -- probably by fax or it might
9 have been called in an order. I don't recall
10 exactly.
11 Q. Do you recall, had you done any work
12 with Mr. Cicalese prior to these Cristo Property
13 loans that are at issue in this case?
14 A. I don't think so.
15 Q. And then as you said you had not done
16 much work, if any, with Mr. Yacker prior to this?
17 A. Correct.
18 Q. So once Coastal receives a request
19 for -- is it title insurance or a title commitment
20 that you get a request for?
21 A. They're interchangeable terms.
22 Q. I've seen both. That's why.
23 A. Yes.
24 Q. What happens at Coastal? What do you do
25 once you have gotten this request?

Page 21

1 A. Well, it's all about process. It's
2 order, title search, title commitment, rundown for
3 closing, policy.
4 Q. Okay. And Coastal would prepare and
5 issue all of the documents in the name of the title
6 companies?
7 A. Yes.
8 Q. As their agent?
9 A. Correct.
10 Q. And then what about the closing
11 protection letters? We've seen those issued as well.
12 Were they ordered separately or --
13 A. No. That's a matter of course, that
14 they're issued with every title commitment where
15 there is an institutional lender.
16 Q. I believe Mr. Yacker had said the same
17 thing. And I've seen on invoices there's always a
18 \$25 charge for the closing protection letter.
19 A. Correct.
20 Q. And was that set by state board or why
21 \$25?
22 A. That's -- it's the filed rate with the
23 State of New Jersey. That's what the cost is. The
24 Insurance Department regulates -- rates for title
25 insurance are regulated along with the closing

6 (Pages 18 to 21)

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1 protection letter, closing service letter.

2 Q. And then who would -- once Coastal had
3 done the title search and issued the commitment and
4 done the bring up for the closing, who would you
5 issue your invoice to?

6 A. Going back a ways but I don't recall
7 if -- I believe it would have gone -- in the
8 beginning it would have gone to Pepsny, but
9 ultimately it should have been paid by Yacker when
10 they closed on -- because they were closing
11 simultaneously when they were buying and selling the
12 property, so they would only really buy the policy on
13 the ultimate purchaser.

14 Q. Eventually I'll get to the paper but one
15 of the things that I wondered about is: We've seen
16 title commitments on a purchase by one of Mr. Kane's
17 entities, whether it be Cristo or J.G.L. or something
18 with a -- there's a number that says CT and then a
19 series of digits, and then on the sale from Cristo to
20 whoever, say Mr. Bustos, there was the same
21 commitment, the same CT, same number but with a
22 little (a) in parenthesis. What was the significance
23 of the (a)?

24 A. It just separated the files. One for
25 the Cristo purchase, the other is for the Cristo

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1 sale.

2 Q. So as far as you know Cristo only bought
3 title insurance on -- or only paid for title
4 insurance or closing protection letters on the sale
5 of the property?

6 A. Somebody did. You know, I don't know
7 where the money came from. It came from Stanley
8 Yacker's trust account. So I don't believe they ever
9 submitted closing statements so I wouldn't see where
10 those funds came from.

11 Q. Okay. And so you just got a check from
12 Mr. Yacker?

13 A. Correct.

14 Q. Would you also -- I'll just ask the
15 open-ended question: Would you also receive a check
16 from Mr. Pepsny for the first transaction?

17 A. Probably in the beginning they did that,
18 but they were interested in saving money and when
19 people flip properties, and, you know, it still goes
20 on to a certain extent, there are people flipping
21 properties, they don't always buy title insurance,
22 the real estate investor. And he was looking for
23 ways to save money, and he just made a decision not
24 to buy the title insurance on his purchase when
25 essentially he was in title for an hour.

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1 Q. And on some properties, or in the
2 beginning at least, would someone, be it Mr. Pepsny,
3 Mr. Kane, also order closing protection letters on
4 the purchase of the property along with the title
5 insurance?

6 A. Only if there was a loan involved where
7 they closed the loan. If they closed and held the
8 property and he got a mortgage from somebody, then
9 there would have been a closing protection letter
10 issued probably.

11 Q. Okay. I don't know if I asked you this,
12 but did you have a sales contact with -- by you,
13 again, I mean Coastal -- with Mr. Pepsny?

14 A. Yes, yes, it was -- really it was me.
15 You know, I started doing some business with Michael
16 Alfieri for years before Pepsny went to work for him.

17 Q. When was the first time you met Mr.
18 Pepsny?

19 A. Oh, God, sometime in the mid '90s,
20 before this all started.

21 Q. Was he working for Mr. Alfieri?

22 A. It was when he was working for Alfieri.

23 Q. And then -- was anyone else in Coastal
24 involved with dealing with Mr. Pepsny or Mr. Alfieri?

25 A. Only from the standpoint of doing --

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1 Maguire would deliver things. You know, he would go
2 and bring them bagels on a Friday or something like
3 that, that type of thing. Sally would have had some
4 dealings with them similar to what she would do with
5 anyone else that we discussed.

6 Q. Okay. Who pays for the closing
7 protection letter?

8 A. Normally it's ultimately out of the
9 purchaser's funds. It's really ultimately whoever
10 pays for the title insurance.

11 Q. So when you would receive payment for
12 the title insurance you would also get payment for
13 the closing protection letter from Mr. Yacker?

14 A. Yes.

15 Q. And then how did -- did Mr. Yacker ever
16 wire money to you or were all his payments via check?

17 A. No, it was all check.

18 Q. And then how did Mr. Cicalese send
19 Coastal payments?

20 A. Same thing, checks.

21 Q. All checks. And in 1996 and 1997 how
22 did Coastal keep its books?

23 A. Pretty fundamental. It was probably the
24 One-Write system back then probably. I don't think
25 we computerized until after that.

7 (Pages 22 to 25)

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1 Q. Do you still have copies of the ledger
2 or the One-Write printouts?
3 A. No.
4 Q. Did you ever -- when did you computerize
5 Coastal's books?
6 A. Probably sometime around 2000.
7 Q. Did you ever load any of the prior --
8 A. No.
9 Q. -- years in?
10 A. No.
11 Q. Okay. What was the purpose of the title
12 commitment in the --
13 MR. McGOWAN: Excuse me one second.
14 This might be my confusion. But there's a policy,
15 there's a commitment but there's also something
16 called the binder.
17 THE WITNESS: That's the commitment.
18 MR. McGOWAN: That's the commitment?
19 THE WITNESS: Old-timers call them
20 binders.
21 MR. McGOWAN: Wiseguy.
22 (A discussion takes place off the
23 record).
24 Q. Mr. Agel, is there a difference between
25 a title commitment and a title binder?

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1 A. No.
2 Q. So the terms are interchangeable?
3 A. Yes.
4 Q. And then what is the purpose then of the
5 title commitment in the real estate closing process?
6 A. It's to set forth requirements for the
7 attorney or closing agent, whoever that is, to comply
8 with in order to get us to the point where we can
9 issue a title insurance policy. We set up things to
10 be discharged like mortgages, tax sale certificates,
11 any judgments, things like that.
12 And then Schedule B, Part 2 -- that was
13 Schedule B Section 1. Schedule B Part 2 would be
14 exceptions to title, like easements, restrictions,
15 setback lines, things like that.
16 Q. Things that would not be covered by the
17 title insurance policy?
18 A. Correct.
19 Q. And then -- so once the requirements of
20 Schedule B, Part 1 were met, then you, Coastal, could
21 go on to issue title insurance?
22 A. Correct. Policy.
23 Q. Title policy. What if the requirements
24 were not met then?
25 A. We would not issue the policy.

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1 Q. And then once -- how long after closing
2 was a title policy normally issued?
3 A. Back then because things were not as
4 automated as they are today probably it could take up
5 to six months.
6 Q. What was the purpose of the title
7 insurance policy?
8 A. It would insure -- in the case of a
9 lender it would insure that they have a valid first
10 lien. Essentially that's it.
11 Q. What do you mean by a valid first lien?
12 A. That there are no liens or encumbrances
13 that have priority over it.
14 Q. And then what is -- any other purpose or
15 any other protection that title insurance provides
16 for a lender?
17 A. Not really, no.
18 Q. And then title insurance was also issued
19 to the purchaser?
20 A. Correct.
21 Q. And what was the purpose of that?
22 A. That would insure that subject to any
23 exceptions in Schedule B, Section 2 that they were
24 the owner of the fee title subject to only the
25 exceptions in Schedule B, 2. So if there were

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1 easements or unrecorded easements that -- things that
2 they're not showing in the public record but that end
3 up showing up and then causing a title problem,
4 that's the coverage that they would get. They would
5 get a defense by the title insurance company.
6 Whether someone tried to come back and foreclose an
7 old lien or something like that.
8 Q. And then what defense does the title
9 insurance company actually provide? They provide an
10 attorney? Do they pay money? What do they do?
11 A. Well, first, they provide a defense.
12 And then ultimately, whether through settlement,
13 negotiations or what, they will make payments. It's
14 kind of no different than what we're doing here.
15 Q. And then -- good to know some things are
16 consistent.
17 What is the purpose of a closing
18 protection letter?
19 A. That is --
20 MR. KOTT: Objection to form. Excuse
21 me. I object to form.
22 Q. You can answer.
23 A. It's to protect against the, essentially
24 I would say, malfeasance of the attorney that it's
25 issued against.

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 Q. And then who does it protect?</p> <p>2 A. It protects the lender.</p> <p>3 Q. And then how is -- actually at some</p> <p>4 point or some people have called the letters closing</p> <p>5 protection letters and others have called them</p> <p>6 closing service letters or closing service protection</p> <p>7 letters. I've seen all three. What were the letters</p> <p>8 protecting against attorney malfeasance issued in</p> <p>9 1996 and '97 called?</p> <p>10 A. Probably closing protection letters but</p> <p>11 we're going back. All of those terms are</p> <p>12 interchangeable. They're the same.</p> <p>13 Q. And you said before that there</p> <p>14 generally -- they're issued along with a title</p> <p>15 commitment or insurance if there was a lender</p> <p>16 involved. How did you know who to issue the letter,</p> <p>17 I guess, as you said, against the attorney?</p> <p>18 A. We would issue it on, it would issue and</p> <p>19 it would cover the actions of the closing attorney.</p> <p>20 Q. And that information, of course, was</p> <p>21 provided to you by the closing attorney himself?</p> <p>22 A. Yes.</p> <p>23 Q. And then once Coastal received payment</p> <p>24 for the, I guess, basically the title insurance and</p> <p>25 the closing protection letter, what happened to the</p>	<p style="text-align: right;">Page 32</p> <p>1 commission to you?</p> <p>2 A. Yeah, I guess that would be.</p> <p>3 Q. I've seen different terms.</p> <p>4 A. It's -- yeah, it's -- part of it is</p> <p>5 commissions and part of it is for out-of-pocket</p> <p>6 expenses.</p> <p>7 Q. So some are reimbursement and some are</p> <p>8 payment for services?</p> <p>9 A. Yes.</p> <p>10 Q. What happened when you remitted the</p> <p>11 money to the title insurance company? You said you</p> <p>12 had -- you would also send the policy to the</p> <p>13 underwriter?</p> <p>14 A. Correct, yes.</p> <p>15 Q. What happened at the title insurance</p> <p>16 company at that point?</p> <p>17 A. I have no idea.</p> <p>18 Q. Did you ever have a policy refused by</p> <p>19 the title insurance company?</p> <p>20 A. Never.</p> <p>21 Q. So they basically received the policy</p> <p>22 and that's how they knew -- let me ask as a general</p> <p>23 question: How did the title insurance company know</p> <p>24 what policies you, the agent, were issuing in their</p> <p>25 name?</p>
<p style="text-align: right;">Page 31</p> <p>1 money at that point?</p> <p>2 A. It would get deposited into our</p> <p>3 operating account, and we would make our remittance</p> <p>4 portion into then our premium trust account.</p> <p>5 Q. The premium trust account was held by</p> <p>6 whom?</p> <p>7 A. It was exactly what it sounded like. It</p> <p>8 was -- we held that in trust until we paid the title</p> <p>9 insurance company, Fidelity or Commonwealth. We</p> <p>10 would do that when we would report the policy to the</p> <p>11 underwriter.</p> <p>12 Q. And so each time you reported a policy</p> <p>13 to the underwriter you then remitted payment?</p> <p>14 A. Correct. We do that in batches.</p> <p>15 Q. Was there a time frame that you did it</p> <p>16 or --</p> <p>17 A. That could be sometimes up to seven or</p> <p>18 eight months after the closing. If it takes us six</p> <p>19 months to issue the policy we're not going to remit</p> <p>20 on it until after the policy is issued.</p> <p>21 Q. And so -- but the money then that was</p> <p>22 due the title companies sat in a trust account?</p> <p>23 A. Uh-huh.</p> <p>24 Q. And then what did you call the money</p> <p>25 that you took from the payment? Was that a</p>	<p style="text-align: right;">Page 33</p> <p>1 A. They wouldn't know until we issued</p> <p>2 unless we called with specific questions on an</p> <p>3 underwriting issue.</p> <p>4 Q. Okay.</p> <p>5 A. Which we do a lot.</p> <p>6 Q. Do you recall if you had called the</p> <p>7 title companies with any underwriting issues on these</p> <p>8 Cristo Property loans?</p> <p>9 A. Yes, very often.</p> <p>10 Q. Why -- what issues would you call about?</p> <p>11 A. There are always issues -- can't say</p> <p>12 those properties, but with any property, these were</p> <p>13 all -- in the very beginning they were all distressed</p> <p>14 properties, foreclosures, tax liens, things like</p> <p>15 that, bankruptcies, so you just -- you get clearance</p> <p>16 from your underwriter on what you need to do to get</p> <p>17 that insured.</p> <p>18 Q. Okay. That was an ongoing dialogue?</p> <p>19 A. I talked to them every day.</p> <p>20 Q. All right.</p> <p>21 A. To this day.</p> <p>22 Q. Still. Okay. So then I was -- so the</p> <p>23 title companies would know that there was a potential</p> <p>24 that they were going to be insuring a certain</p> <p>25 property because you had called about it and raised</p>

9 (Pages 30 to 33)

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1 certain issues?

2 A. Not a specific property. We would talk
3 about a file and say: I'm insuring a property in
4 Asbury Park, these are the circumstances, what should
5 I do?

6 Q. Okay. One question I have because I
7 have seen different -- a lot of documents in this
8 case and particularly some from Coastal's file. Was
9 there any magic -- and I'll use that as a generic
10 term -- to you signing a closing protection letter?
11 Some I've seen signed and in some of your files
12 unsigned?

13 A. That would just be probably because you
14 saw a file copy. If it was unsigned it was probably
15 a file copy. I didn't sign the file copies.

16 Q. So if there's a file -- a copy of a
17 letter in your files, a closing protection letter had
18 been issued to the attorney?

19 A. Most likely.

20 Q. Any reason it wouldn't be?

21 A. Probably not.

22 Q. Okay. And then once the seven months
23 has gone by, the title insurance policy has been
24 issued, who do you send the title insurance policy
25 to?

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1 representative at Commonwealth, to be honest, because
2 I signed with them with one of their counsel. Roger
3 Blauvelt at the time was their head guy in New Jersey
4 and we had known each other for a while and I signed
5 with him. We might have just sent them up to that
6 office. We might have sent them to the NPC. I don't
7 know.

8 Q. And what would you send in the batches
9 to Commonwealth, or Fidelity for that matter?

10 A. Pretty much just the policies. And then
11 what they would do is they would do their reports and
12 they would send us a bill, and we would do a check
13 out of the premium trust account.

14 Q. Would the checks to the title company be
15 in batches?

16 A. No. Then there would be just one check.
17 Say it might be for 20 or \$30,000.

18 Q. For a number of --

19 A. A number of files, yes.

20 Q. Back to the -- on the closing protection
21 letters, what if the name or the attorney doing the
22 closing changed during the closing process, would
23 Coastal issue another CPL?

24 A. If we knew about it. If we knew the
25 attorney changed and the lender asked for a new

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1 A. Probably it would have gone to the local
2 office for them to do their reports to the home
3 office. Then it wasn't computerized, today it is, we
4 remit automatically.

5 Q. By local office, you mean of the title
6 companies?

7 A. Yes.

8 Q. And then -- we deposed a representative
9 of Commonwealth and she had testified she thought
10 there was an entity called the NPC, National
11 Processing Center.

12 A. Uh-huh.

13 Q. Somewhere in Kentucky. Do you recall?

14 A. I do recall something like that. I
15 think that we still would send our remittances -- I
16 call them remittances. It's the batches of policies,
17 I would send them to our local agency rep.

18 Q. Who was that?

19 A. Then her name would have been Terry
20 Swope.

21 Q. On behalf of Commonwealth?

22 A. I don't know if she was with
23 Commonwealth or she was Lawyers Title. She's out of
24 the picture now too. People change in this business
25 so much. You know what, I don't know if we had a

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1 closing service letter, then, yes.

2 Q. But if you didn't know the attorney was
3 changing you would just issue --

4 A. Yeah, we would have issued the original
5 closing protection letter from the original attorney
6 that ordered it, and then if we didn't know it
7 changed, then we wouldn't have changed the closing
8 service letter.

9 Q. Okay.

10 MR. MAGNANINI: Off the record.

11 (A discussion takes place off the
12 record).

13 Q. Back again to the closing protection
14 letter. Is that a standard form of a document?

15 A. Yes.

16 Q. And one of the things I've seen is that
17 the closing protection letters were slightly
18 different as between those issued by Coastal for
19 Nations or Fidelity and Commonwealth. There was an
20 additional paragraph on the Nations' and Fidelity's
21 closing protection letters. Why was that?

22 A. Each --

23 MR. HAYES: Object to the form. There's
24 also a difference between some of the Commonwealth.

25 MR. KOTT: I join in that well-founded

10 (Pages 34 to 37)

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1 objection.

2 MR. McGOWAN: You can answer.

3 A. Each company files its own forms with
4 the Insurance Department and they can vary. It's
5 just what the insurance department approves is what
6 we issue.

7 Q. Okay. Again, during the deposition of
8 the Commonwealth corporate representative she had
9 suggested that she thought -- Commonwealth thought
10 perhaps that Coastal had issued the wrong closing
11 protection letter on behalf of some of the
12 Commonwealth -- some of the loans that Commonwealth
13 insured because of this different language in there,
14 by mistake I guess.

15 A. I'm not aware of that. When we remit
16 policies we remit -- then we remitted copies of our
17 closing protection letters that we issued because at
18 that time they were numbered so they saw what we
19 issued.

20 Q. The title companies did?

21 A. Yes, they did.

22 Q. Okay. Was there any difference in the
23 language of the closing protection letters if the
24 loan that was being issued was a subprime loan as
25 opposed to a conforming loan?

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1 A. I don't think so. We only had one form
2 for each company.

3 Q. Do you recall if Coastal ever chose not
4 to issue a title policy or closing protection letter
5 on a loan funded by Walsh Securities?

6 A. Yes. When this all started to break and
7 we saw things were not what they should be we stopped
8 issuing policies, commitments, everything.

9 Q. And that was -- who made that decision
10 at Coastal?

11 A. I did. You know, I consulted with
12 underwriters.

13 Q. The title company underwriters?

14 A. Yes. I wouldn't have done it anyway,
15 not when I saw the things that started happening.

16 Q. And so once things, in your words,
17 started to break, which I will use the end of June
18 1997 time frame, you consulted with underwriters
19 for -- was it then Fidelity and Commonwealth?

20 A. Yes.

21 MR. HAYES: Object to the form. Is the
22 witness acknowledging that's when it started to break
23 in his mind? Maybe we can ask the witness what
24 started it.

25 Q. I'll ask the foundational question. In

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1 your mind when did this -- the issue that's at the
2 heart of this litigation begin to break?

3 A. Much earlier in the year. We discovered
4 that documents were not being recorded. We weren't
5 being paid on files and, you know, the way our
6 process goes we -- when we get paid, that's right
7 after closing hopefully, and generally it is. It's
8 within a few weeks after closing we will get a check
9 with documents either to record or -- some attorneys
10 send you documents to record, some do not. Yacker
11 did not, but he would send his Affidavits of Title,
12 he would send payments, corporate resolutions, all of
13 that. What we would do there is do the deposit.
14 Break out the remittance.

15 We would then put the file in for what
16 is called the cover record. That's the next step in
17 the process after the policy, and that's a search to
18 cover the recording of the documents. You update the
19 search to cover the recording.

20 We didn't generally order those cover
21 records for at least a month after closing because
22 there's, number one, the couple of weeks delay in
23 getting paid. Number two, there's a delay in
24 recording. They mail them in and they sit there for
25 two weeks before the county records them. And then,

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1 you know, you got to wait for mortgage cancellations
2 to come in and things like that. So we generally
3 wouldn't order a cover record until at least a month
4 after closing.

5 Sometimes it got to be -- I don't
6 remember the dates, but it was early in 1997, I guess
7 it was, it was cold weather, I remember that, it
8 could have been late '96, we discovered that
9 documents weren't being recorded at all. So I got in
10 touch with Yacker and he just said: I don't know,
11 contact Pepsny. And Pepsny got in touch with -- I
12 guess it was Kane because we -- Yacker didn't have
13 the money to pay transfer taxes, he didn't have the
14 money to pay recording fees and we said these
15 documents have to be recorded.

16 At some point in time, I don't recall
17 when it was, we got documents finally, we did get
18 original documents, and we got money from Kane from
19 one of his companies to pay the recording fees and
20 transfer taxes. But that came from him. We then
21 recorded a large amount of documents. I want to say
22 30 or 40 different transactions we recorded. And it
23 was during that process I told Pepsny that there was
24 no way that they could do this. That -- that's when
25 I think they brought Cicalese in saying: We're not

11 (Pages 38 to 41)

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1 going to use Yacker as much because he's not doing
2 what he's supposed to be doing. I think that's --
3 that's my recollection. It's a long time ago. And
4 from there we noticed a couple of times that they
5 actually closed on selling a property before they
6 purchased it.

7 Q. We've seen that.

8 A. And that's when we stopped. That's when
9 we said: We're done and, you know, I talked to both
10 my underwriters about it. Commonwealth was my main
11 underwriter at the time but we spoke and we said: No
12 more.

13 Q. When did you speak with the underwriters
14 at Commonwealth?

15 A. It would have been probably early '97,
16 early to -- first quarter, say by the end of the
17 first quarter. I don't recall when we recorded those
18 deeds. I want to say it was probably sometime around
19 March.

20 Q. I think I know what you're referring to.
21 Going through the documents we have there's, I don't
22 know, two to 300 different documents recorded in
23 Monmouth County on April -- I want to say it's the
24 8th and the 9th of April 1997.

25 A. That's about the right time frame.

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1 Q. Okay. And that's what it says, it's all
2 recorded by Coastal Title Agency.

3 A. Right.

4 Q. And that's -- that was one of the topics
5 I was going to get to later was, you know, how the
6 hell did that happen?

7 A. One of the questions we asked.

8 Q. As you said, Coastal has been in
9 business for 10 on 23 years. Have you ever had a
10 situation like that in any other business transaction
11 you have been in where you have to record maybe two
12 or 300 documents at one time for sales going back
13 almost a year?

14 A. Never.

15 Q. And so it's your recollection that after
16 you did those -- the recording of all those deeds
17 Coastal stopped issuing on behalf of Commonwealth or
18 Fidelity title insurance policies and closing
19 protection letters?

20 MR. HAYES: Object to form. I don't
21 think that's what he said.

22 MR. McGOWAN: You can answer the
23 question.

24 Q. If what I'm saying is wrong tell me.

25 A. No. We stopped -- essentially we

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1 stopped doing business with them.

2 Q. With -- by "them," you mean Mr. Pepsny,
3 and Mr. Kane, Mr. Cicalese?

4 A. Right, yes. Pepsny we might have done
5 some work for after that. I'm not certain but it
6 would have been Yacker and Cicalese and Kane.

7 Q. Let me break down your answer as lawyers
8 always do. You spoke to -- how did it come to your
9 attention that these -- all these various documents
10 were not being filed?

11 A. When we did our cover records and we saw
12 the documents weren't recorded we contacted -- that's
13 when we contacted Yacker and he brushed us off and we
14 contacted -- that's when he told us to contact
15 Pepsny.

16 Q. Did you speak to Lorraine King at all
17 about why the files weren't or the documents weren't
18 being recorded?

19 A. I don't think so. Something that serious
20 I wouldn't have talked to a secretary.

21 Q. And then did you ever speak to Mr.
22 Yacker after that point?

23 A. No.

24 Q. But then you did contact Mr. Pepsny?

25 A. Yes.

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1 Q. And then when was that, if you can
2 recall?

3 A. Oh, it would have been within days of or
4 minutes maybe of when I spoke with Yacker.

5 Q. And did you meet with Mr. Pepsny or did
6 you telephone him?

7 A. Either/or. I did have a -- one meeting
8 with Pepsny and Kane and I don't -- I don't recall
9 what -- you know, there were so many conversations, I
10 don't remember the sequence. I don't remember
11 whether the conversation about that was when I had
12 lunch with them or whether it was a telephone call.
13 I think it was over the telephone though.

14 Q. Okay. And what was the substance of
15 your conversation with Mr. Pepsny?

16 A. We've got a problem. These documents
17 aren't recorded. I've got probably 30, 40 files at
18 least that I've been paid for, documents aren't
19 recorded, we have to get them recorded. And they
20 were pretty diligent in getting the documents
21 together and getting me the money. I seem to recall
22 it was around 50 or \$60,000 just for recording and
23 transfer tax fees.

24 Q. Okay. And that was paid to you by Mr.
25 Pepsny or Mr. Kane directly?

12 (Pages 42 to 45)

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<p style="text-align: right;">Page 46</p> <p>1 A. I think it came from Kane. 2 Q. Was that in the form of a check, do you 3 recall? 4 A. It would have been a check, I'm sure. 5 Q. Do you know where Mr. Kane got the 6 money? 7 A. No. 8 Q. Off the record. 9 (A discussion takes place off the 10 record). 11 Q. And you said you had lunch with Mr. 12 Pepsny. When was that, Mr. Agel? 13 A. I don't recall the date. I recall it 14 was cold weather. 15 Q. Was anyone else at the lunch? 16 A. Yes, Kane, Bill Kane. 17 Q. And what was the -- I'll say the 18 substance of the conversation? 19 A. That I recall dealt with the issues that 20 were coming up because there were a lot -- at this 21 point when there was a lot of volume, and they were 22 telling me that the processors at the lender were 23 having difficulties. They were getting bogged down 24 in all of the crazy -- I shouldn't say crazy 25 requirements, but all the requirements that we would</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Correct. We would not issue the other 2 title commitment or policy unless everything was 3 cleared up. 4 Q. Did you ever speak with any of the 5 processors at Walsh Securities -- 6 A. No. 7 Q. -- about these issues that Mr. Kane said 8 they were having? 9 A. Not that I recall, no. 10 Q. Do you recall speaking with anyone at 11 Walsh Securities? 12 A. Not to my recollection. 13 Q. Have you ever met anyone from Walsh 14 Securities? 15 A. No, I don't think so. It was possible I 16 might have met D'Apolito. 17 Q. Anthony D'Apolito? 18 A. Possible. I don't think so. I wouldn't 19 have known him if I fell over him, but I don't think 20 so, but there is a possibility I might have met him. 21 Q. Where do you think you may have met him, 22 if you did? 23 A. Maybe at Pepsny's office or either 24 stopping to drop something off at Kane's office. 25 Q. Okay. What happened after the -- let me</p>
<p style="text-align: right;">Page 47</p> <p>1 have to clear up the title from when Kane was buying. 2 So there might be tax sale certificates, judgments, 3 old mortgages, bankruptcies. We discussed that a 4 little earlier. 5 So they were saying that that was 6 confusing the people at Walsh. That it was -- that 7 they were just getting bogged down. That people were 8 doing double work trying to clear it all up. Is 9 there any way we can get around and have a clear 10 title commitment for the lender to use. And that's 11 where that "(a)" file came in with the parenthesis. 12 Q. Okay. 13 A. Okay. And it was just to make sure 14 that -- it was so that they could review a clear 15 title commitment, and they could just get it clear to 16 close. They would always close and they always 17 cleared everything up on the original title 18 commitment without the suffix on it. 19 Q. Right. 20 A. And then, you know, the policy would be 21 issued on that (a) file. 22 Q. Okay. So Mr. Kane on his or his 23 company's -- on his acquisition of a particular 24 property, that's where they would do all the clearing 25 of the title?</p>	<p style="text-align: right;">Page 49</p> <p>1 go back to the lunch meeting you had with Mr. Kane 2 and Mr. Pepsny. What else was discussed at that 3 meeting? 4 A. Well, you know, we did have concerns 5 about what -- you know, how can you buy these 6 properties for 30,000, whatever it is, and sell it 7 for 100 the next day? And, you know, we were 8 concerned about that. And I had spoken to, at the 9 very least, counsel for Commonwealth about that and, 10 you know, because I was concerned and I wanted them 11 to know what was going on. 12 And what they were telling me is that 13 when he got -- when they signed a contract to buy, 14 they would immediately get like a use and occupancy 15 agreement, start working on them, get them ready to 16 sell during the time period between when they bought 17 and closed and they would market them immediately. 18 It made sense at the time. 19 Q. By "they," you mean Mr. Kane? 20 A. Yes. 21 Q. Did you ever physically go look at any 22 of the properties? 23 A. No. 24 Q. Even though it's fairly close. Right? 25 Asbury Park is --</p>

13 (Pages 46 to 49)

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1 A. Right.
 2 Q. But you never saw any of the properties
 3 physically?
 4 A. No.
 5 Q. Were you concerned at that point that
 6 there might be a fraud going on?
 7 A. No. No. They gave me all the right
 8 answers. The ones that we thought were legitimate
 9 answers.
 10 Q. And you said you spoke to Commonwealth's
 11 counsel. Do you recall who that was?
 12 A. Yes, Nancy Koch.
 13 Q. And when was the first time you spoke
 14 with Miss Koch about the -- these Kane properties?
 15 A. I don't recall when.
 16 Q. Was it about the time you started -- you
 17 had to record these documents?
 18 A. No, I think it was before that.
 19 Q. It was even before that. Do you recall
 20 whether it was cold or warm?
 21 A. No. I was in an office and she was in
 22 an office. At that time my office had no windows.
 23 MR. McGOWAN: Off the record.
 24 (A discussion takes place off the
 25 record).

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1 Q. Do you recall if you spoke to Fidelity's
 2 counsel about the time you spoke to Miss Koch?
 3 A. No, I don't recall.
 4 Q. If you had spoken to Fidelity's counsel,
 5 was there one person at Fidelity that you usually did
 6 speak with?
 7 A. If he was there at that time it would
 8 have probably been Ed Norton.
 9 Q. Where was Mr. Norton physically located?
 10 A. They moved around a lot. I couldn't
 11 tell you exactly where. He was in offices all over.
 12 He went from Red Bank to White Plains to
 13 Pennsylvania. I mean, he was all over the place so I
 14 couldn't tell you exactly.
 15 Q. It was the Tri-State area. Was he ever
 16 in California or somewhere like that?
 17 A. Not that I know of, no.
 18 Q. When was the last time you have spoken
 19 to Mr. Norton?
 20 A. I couldn't tell you. It's a long time.
 21 Q. Long time. Did you have discussions
 22 with any other counsel at Commonwealth?
 23 A. I don't think so. I doubt it. It's
 24 possible. If I can give you a couple of names of
 25 people that were there over the years. I don't know

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1 if they were there at that time though. Kevin Carins
 2 was there and then Gary Hamm, but I don't recall if
 3 they were who I would have spoken to. I do remember
 4 conversations with Nancy though.
 5 Q. What was the substance of those
 6 conversations with Nancy Koch?
 7 A. Always underwriting questions. You
 8 know, how to clear certain objections or, like I
 9 said, in -- the one time that I did talk to her about
 10 kind of the procedure, what was going on and that,
 11 you know, am I okay here?
 12 Q. And what was her response?
 13 A. She said that it sounds like you're
 14 doing the right thing. Everything seems okay. So
 15 she told me I asked the right questions.
 16 Q. Prior to this whole situation becoming
 17 public did Commonwealth ever tell you not to issue a
 18 title insurance or a closing protection letter on one
 19 of these Kane properties?
 20 A. No.
 21 Q. And same question for Fidelity?
 22 A. Same answer, no.
 23 Q. So after Coastal files all of these
 24 documents in March, or as I said I've seen on the
 25 recording stamp, it's a little kind of cash register

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1 receipt is really what it looks like.
 2 A. Right.
 3 Q. April I think -- as I said I think the
 4 dates are April 8 or 9 of 1997, did Coastal do any
 5 more business with Mr. Yacker?
 6 A. He might have continued or finished
 7 closing some other transactions. I don't recall.
 8 Like I said, I thought that's one of the reasons they
 9 switched over to Cicalese.
 10 Q. Okay. So then the way the process would
 11 work was Mr. Kane would buy a property, which he was
 12 represented by Mr. Pepsny, and then the sale would
 13 occur with Mr. Cicalese as the closing attorney?
 14 A. The ultimate sale, yes.
 15 Q. The sale from Mr. Kane's company to a
 16 buyer, and so then at that point you were dealing
 17 with Mr. Pepsny and Mr. Cicalese?
 18 A. Yes.
 19 Q. Were you aware that Lorraine King had
 20 continued working on the Kane sales by working for
 21 Mr. Cicalese?
 22 A. I kind of recall that. I think that
 23 would be accurate.
 24 Q. Okay. Would you like to take a break?
 25 A. Yes.

14 (Pages 50 to 53)

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1 (A recess takes place.)

2 Q. Back on the record. Mr. Agel, going
3 back to the discussion that you said that after you
4 found out that these documents weren't being recorded
5 when you did your cover searches, who was the cover
6 search provided to?

7 A. That's an internal document. That's for
8 us to prepare the title policy from.

9 Q. Oh, okay. What does it physically look
10 like?

11 A. It's five or six pieces -- it's a copy
12 of the original title commitment, and then that goes
13 to our searcher at the time and then just attached to
14 that would be copies of the deed and the mortgage
15 that's being insured. That's what they would search
16 to pick those up in the record, and then the searcher
17 would make notes on the commitment, mostly on
18 Schedule B, Section 1 next to, say, if there's a
19 mortgage to be cancelled, they'll tell us whether
20 it's open or cancelled. Same thing if there's a tax
21 sale certificate, something like that.

22 Q. And were those documents retained in
23 Coastal's files?

24 A. Yes.

25 Q. And then what would happen if that

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1 search showed that there were still mortgages not
2 cancelled or something like that?

3 A. There would be a letter to that -- in
4 those cases there would be a letter to Pepsny's
5 office saying: We're ready to issue our title
6 policies but these matters are still open of record.

7 Q. Did you ever send those letters to the
8 lender?

9 A. No, no.

10 Q. Why not?

11 A. They're not responsible for cleaning the
12 title -- for clearing the title objections. They
13 want title objections cleared.

14 Q. Right. Okay. So the person responsible
15 was the attorneys?

16 A. Correct.

17 Q. And you said you would send it to
18 Pepsny. Why wouldn't you send it to Mr. Yacker or
19 Mr. Cicalese?

20 A. In the beginning -- we probably never
21 sent them to Cicalese because he came in so late. In
22 the beginning we probably would have sent them to
23 Yacker and to Pepsny because that would probably have
24 been one of the things that resulted in that meeting
25 where we were discussing getting that second

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1 commitment out, the clean commitment. So probably
2 about the time that we did that we would have only
3 sent to Pepsny because he would be responsible for
4 cleaning up any issues with title -- most of the
5 issues with title would be coming out of the --

6 Q. Purchase by Mr. Kane's company?

7 A. -- purchase by Mr. Kane's company, yes.

8 Q. Was Mr. Kane's business model usual for
9 the title work you did where you had a purchase and
10 then a sale at the same time?

11 A. At the time there were a lot of
12 different companies doing similar things. You know,
13 not as often would they buy and sell the same day,
14 which is why we asked that question, the questions as
15 to: How can you do this?

16 Q. Right.

17 A. That was a bit of a red flag, but, no,
18 there were other people doing it all over the place.
19 Some did it same day, some did it over a period of
20 two months, three months.

21 Q. What percent of title work you were
22 doing encompassed those, I'll say, purchase, fix-up,
23 sale deals?

24 A. Probably less than one percent of our
25 business.

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1 Q. Okay. What was the volume of Coastal's
2 business in 1996?

3 A. We would have been doing over 200 orders
4 as month, well over.

5 Q. And so about 2,400 title insurance
6 requests a year?

7 A. At least. Probably more.

8 Q. And what was -- what did Coastal -- I
9 will start with: What was the gross income for
10 whatever the amount of business you were doing?

11 A. Probably three, four million in
12 revenues.

13 Q. And how much -- was there a percentage
14 that you would remit on the title insurance back to
15 the title insurance companies?

16 A. Yes. We remitted 15 percent of the
17 premium and the full charge for the closing service
18 letter, the \$25.

19 Q. How much did you remit say in 1996 to
20 Commonwealth and Nations/Fidelity?

21 A. It would have to be -- it would be a
22 guess but it probably had to be around \$400,000.

23 Q. And then through the first half of 1997
24 about how many title insurance policies did Coastal
25 issue?

15 (Pages 54 to 57)

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1 A. Probably half of that total number so
 2 maybe 12 -- at least 1,200.
 3 Q. And was the gross income similar for
 4 Coastal in 1997?
 5 A. Probably.
 6 Q. As to 1996, what was Coastal's profit
 7 then in 1996?
 8 A. I couldn't tell you.
 9 Q. Any idea for 1997?
 10 A. No.
 11 Q. Do you have any documents that would
 12 show that at this point?
 13 A. I would be able to come up with all the
 14 tax returns somehow probably. I've had the same
 15 accountant for 20 something years.
 16 Q. Going back to the issue with the lack of
 17 documents being filed, you said you spoke to
 18 Commonwealth, you may have spoken to someone at
 19 Fidelity, you met with Mr. Pepsny and Mr. Kane. Was
 20 there anyone else you spoke to?
 21 A. I tried to speak to Yacker but like I
 22 said I was brushed off. I don't think anyone else.
 23 Q. Was there anyone you discussed it with
 24 within Coastal?
 25 A. Probably not. That's something -- while

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1 we're a big agency we're a small business and
 2 something that serious I work on. So, no, I wouldn't
 3 have let anybody work on that serious stuff.
 4 Q. That's what I was going to ask you. Did
 5 Sally work on that at all?
 6 A. I doubt it. No, not -- not something
 7 that serious.
 8 Q. When did she leave Coastal?
 9 A. Two years ago.
 10 Q. And then there was -- one other name was
 11 Sherry Federer?
 12 A. Yes.
 13 Q. And I've seen her in correspondence to
 14 either Mr. Yacker, Cicalese, Pepsny.
 15 A. Uh-huh.
 16 Q. Did she work on this issue that you had?
 17 A. No.
 18 Q. Okay.
 19 A. She was strictly secretarial at the
 20 time.
 21 Q. I assume she doesn't work at Coastal
 22 anymore?
 23 A. Yes, she does.
 24 Q. She's still there?
 25 A. Yes.

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1 Q. And then did you try and contact Walsh
 2 Securitics at all?
 3 A. No.
 4 Q. Any reason why not?
 5 A. We never really dealt directly with
 6 lenders back then.
 7 Q. Do you deal more with lenders now?
 8 A. Yes.
 9 Q. When did that change occur?
 10 A. Over the past three to five years when
 11 we have had to adapt our business to changing times
 12 and do closings.
 13 Q. Which actually was a future subset but
 14 I'll ask it now. We've come to learn there's north
 15 Jersey closings and south Jersey closings and Coastal
 16 is in Monmouth. What did you consider --
 17 A. At that time we would be north Jersey
 18 style.
 19 Q. Back in '96, '97?
 20 A. Yes.
 21 Q. And you're different now?
 22 A. Today there's no north Jersey, south
 23 Jersey. The Mason-Dixon line is gone.
 24 MR. McGOWAN: Off the record.
 25 (A discussion takes place off the

Page 61

1 record).
 2 Q. So nowadays you do closings?
 3 A. Yes.
 4 Q. Did you do any closings in 1996 or 1997?
 5 A. No.
 6 Q. When did you stop doing business with --
 7 I'll call the group at that point Mr. Kane or his
 8 companies, Mr. Pepsny and then Mr. Cicalese?
 9 A. Cicalese, Kane would have been probably
 10 right around that April date when those things got
 11 recorded. Right around there. I couldn't give you
 12 an exact date. Pepsny, we might have done business
 13 with him long -- for a little while longer. He had
 14 other real estate clients that he dealt with that he
 15 would order other title searches and insurance from
 16 us but we stopped not terribly long after that. He
 17 and Alfieri probably would have been coincidental
 18 with the time he and Alfieri broke up.
 19 Q. Which was after this Kane fraud was made
 20 public?
 21 A. Yes, correct.
 22 Q. And so you continued doing business
 23 then -- when do you think you stopped doing business
 24 with Mr. Cicalese?
 25 A. It had to be -- it had to be sometime in

16 (Pages 58 to 61)

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1 the very early spring, I presume, of '97, whenever
2 all of this started to go bad in terms of documents
3 not getting recorded, having closings without owning
4 property.

5 Q. We've seen -- I've seen that, although
6 we have -- and I will get to the paper in a bit, we
7 actually have I think loan closings taking place up
8 until June of 1997. And I thought Coastal is the
9 title agent on those.

10 A. Well, it's possible. We -- I don't
11 recall having any contact with them after say April
12 or so, but it is possible they continued to use the
13 title commitments that were issued.

14 Q. Okay.

15 A. And I couldn't even tell you if we were
16 paid on them at this point because we handed all of
17 our files over to -- any pending files I think we
18 turned over to the FBI.

19 Q. And when was that?

20 A. Had to be summer of '97.

21 Q. How did you terminate your business
22 relationship Coastal had with, I'll say, Cicalese and
23 Kane?

24 A. I never really had a business
25 relationship with Kane. It was through Pepsny, and I

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1 just told Pepsny and I -- I don't know if we said
2 anything -- that might be the one time I spoke with
3 Cicalese, I don't know, but I just told them that we
4 can't insure these any more.

5 Q. Okay. Did you send him a letter or
6 anything?

7 A. Probably not.

8 Q. You told -- what did you tell Mr.
9 Pepsny?

10 A. That I can't continue to insure these,
11 there's something seriously wrong here.

12 Q. Do you recall if Mr. Pepsny or Mr.
13 Cicalese said anything?

14 A. No, not really.

15 MR. KOTT: You don't recall or they
16 didn't say anything?

17 THE WITNESS: I don't recall. I don't
18 recall.

19 Q. Did you ever speak to Mr. Kane at that
20 point in time?

21 A. You know, I do recall talking to him on
22 the telephone and -- you know, because I do believe
23 that we had conversation where he said: Listen, I'm
24 legit, I'm doing everything right. But that was
25 about it. No, I don't recall having any other

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1 conversations with him.

2 Q. Do you recall when that conversation
3 occurred?

4 A. It was probably after the story broke in
5 the paper, the newspaper story.

6 Q. And then you said that whatever pending
7 files you had for Mr. Kane or his companies were
8 turned over to the FBI. What other documents did you
9 give the government?

10 A. Well, I gave them my entire files. You
11 know, I gave them everything. There were more
12 documents where they had not recorded -- that they
13 had not recorded. They might have gotten two
14 batches, I don't recall, frankly, but there were
15 original documents, like, original deeds and
16 mortgages that we turned over to --

17 Q. To the government?

18 A. To the FBI, yes.

19 Q. When you said that they had gotten you
20 these additional documents, were they for sales that
21 occurred after you already recorded all of these
22 documents that were recorded in April?

23 A. I think, I am not certain but I think
24 so.

25 Q. Do you remember how many properties were

Page 65

1 involved in those?

2 A. No.

3 Q. Did you ever get your documents back
4 from the government?

5 A. I don't think so. I don't recall.

6 Q. Were you interviewed by the government?

7 A. Yes.

8 Q. And did you ever testify before a grand
9 jury?

10 A. No.

11 Q. How many times were you interviewed?

12 A. Once.

13 Q. When was that?

14 A. Probably in the springtime of '97. It
15 was Alan Leibman.

16 Q. Actually were you interviewed after the
17 story was public or before that?

18 A. You know, I don't recall. That I
19 couldn't tell you. I was also interviewed by Larry
20 Willis and Tom Jobs.

21 Q. From the FBI?

22 A. Yes. That happened first, and then I
23 went in to see Alan Leibman after that.

24 Q. Do you know who produced -- once the
25 civil litigation was filed who produced documents on

17 (Pages 62 to 65)

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1 behalf of Coastal Title? Was it a law firm?

2 A. Yes, Ansell, Zaro, Grimm & Aaron at the
3 time.

4 Q. Do you know anything about how the
5 documents were given to them or how they were
6 produced?

7 A. Yeah, I delivered all of my files -- I
8 don't know -- it must have been -- they got files
9 copied. I recall that. They got files copied. I
10 met one of the attorneys at a copy place in Ocean
11 Township on Route 35 on a weekend to do it. And
12 there were copies made. I remember it was very
13 expensive and I guess -- yes, we had documents that
14 were --

15 Q. The files -- we actually have a
16 repository of documents relating to these fraudulent
17 loans. The documents from Coastal Title are -- they
18 have a Bates stamp number at the bottom and they're
19 labeled CTA, CTB, CTC, CTD, CTE. Do you have any
20 idea why they were organized that way?

21 A. No.

22 Q. I'll ask counsel.

23 MR. McGOWAN: It wasn't done by him and
24 it wasn't done by us.

25 Q. That's why -- it's an odd system and I

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1 like?

2 A. Probably a few. You know, we did a lot
3 of business together so we spoke fairly often.

4 Q. What was the substance of the
5 conversations about the Kane properties?

6 A. You know, he was also just saying they
7 were legit, that this is all BS, the story, and
8 that's it. That's essentially it. They were just
9 trying to defend what they were doing.

10 Q. After the conversations with Mr. Pepsny
11 did you have any further conversations with attorneys
12 for Commonwealth or Fidelity?

13 A. I don't think so. Other than, you know,
14 the processing of things for the claims when the
15 claims finally started to hit.

16 Q. And then some of the other people that
17 at least Walsh Securities alleges were involved in
18 this was a gentleman named Gary Grieser.

19 A. Right.

20 Q. And --

21 A. I remember the name.

22 Q. And his company was called Capital
23 Assets Property Management?

24 A. Yes.

25 Q. Did you have any business dealings with

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1 thought there's got to be some logic behind it.

2 A. No, they handled getting all of that
3 done.

4 Q. Okay.

5 MR. MAGNANINI: And then do you have the
6 document request?

7 Q. While Miss Wagner is getting that out,
8 after -- after this Kane fraud became public, did you
9 ever speak with Mr. Pepsny?

10 A. I -- probably, yes.

11 Q. About the frauds?

12 A. I wouldn't have -- I wouldn't exactly
13 categorize it about frauds.

14 Q. About the Kane properties?

15 A. About those properties, yes, I would
16 have, yes, because -- I don't recall if I spoke to
17 him after the story had hit the paper, the first
18 story hit the paper because the reporter had called
19 me a few times so I knew something was up. So I
20 might have spoken to him about that beforehand,
21 before the story came out, but I did speak to him
22 during that time period. I couldn't tell you if it
23 was after the story hit the paper or if it was
24 before.

25 Q. Was it several conversations it sounds

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1 Mr. Grieser or his property management company?

2 A. No.

3 Q. And then, Mr. Agel, I am going to have
4 marked as exhibit Coastal Exhibit 1, and that's just
5 something the court reporter will put a stamp on, and
6 we will have this piece of paper, Rule 26
7 Disclosures, which were provided by Mr. McGowan's
8 firm on behalf of Coastal Title and I just ask you to
9 take a look at that.

10 (Coastal-1, Rule 26 Disclosures, is
11 received and marked for identification.)

12 Q. I would ask you to take a look at that
13 and let me know if you have seen it before.

14 A. Not to my recollection.

15 Q. And I would ask you to go to the second
16 page and under A, it says -- there's a list of
17 disclosure of individuals who may have information
18 about the issues in the lawsuit, and we already
19 discussed the first two people and the fourth, and
20 you had said you had never met Mr. Walsh?

21 A. Correct, I have not met him.

22 Q. And that had brought us to number six,
23 Mr. Grieser, and my question was: Had you ever had
24 any business dealings with Mr. Grieser or his
25 companies, Capital Assets Property Management?

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 A. Other than I can tell you he did -- I do 2 remember that he bought some properties that we would 3 have insured, but I have never had any direct 4 dealings with him. 5 Q. Individually? Do you know -- had you 6 ever spoken to him? 7 A. I don't think so. 8 Q. Okay. Did you ever hear from Mr. Kane 9 or Mr. Pepsny that Mr. Grieser was working with Mr. 10 Kane? 11 A. Yes. 12 Q. And who told you that? 13 A. It would have been Pepsny. 14 Q. What did he tell you about Mr. Grieser? 15 A. Well, when all these things were going 16 on, you know, we had questions, you know, the 17 transfers into Capital Assets and the ultimate buyers 18 or out of the ultimate buyers into Capital Assets 19 and -- 20 Q. Talking about those joint venture deeds? 21 A. Yes. 22 Q. The 60/40 split? 23 A. Yeah. You know I had asked about those 24 because we were -- wanted to know what we should be 25 insuring. Do we insure what we are committed to</p>	<p style="text-align: right;">Page 72</p> <p>1 tax laws changed in partnerships, real estate 2 partnerships for tax advantages, and, you know, I was 3 a tenant in common with that property guy so it 4 didn't seem -- it didn't seem crazy. Cost me a lot 5 of money to get out of it, but that was thanks to the 6 change in the tax laws. 7 Q. Mr. Reagan? 8 A. Yes. 9 Q. And then you said that you knew Mr. 10 Grieser actually had purchased some properties that 11 you insured? 12 A. Yeah, I thought he did, yes. 13 Q. And then were there any issues or any 14 unusual events surrounding Mr. Grieser's purchases? 15 A. I don't think so. One of them I thought 16 was supposed to be a personal residence and it was 17 down on the ocean, but they did everything they were 18 supposed to do. They cleared up the titles, did what 19 they had to do. No, nothing seemed unusual. 20 Q. And then the third person listed on page 21 two under Section A is Robert Skowrenski, II. Who is 22 Mr. Skowrenski? 23 A. My knowledge of him is that he was the 24 owner of National Home Funding. 25 Q. And what was National Home Funding?</p>
<p style="text-align: right;">Page 71</p> <p>1 insure or are we insuring Capital Assets and the 2 joint tenant or tenant in common. So, you know, I 3 was aware of Capital Assets. I did ask what -- asked 4 Pepsny what was going on and he said they're the 5 property management company, that they manage some 6 properties, collect the rents and all that. 7 Q. Who were you insuring? Was it the buyer 8 or the buyer and Capital Assets? 9 A. No, it was -- we checked -- that I'm 10 pretty sure came from Yacker too was that we were to 11 insure the deed that went with the purchase money 12 mortgage, just the straw buyer, so to speak. 13 Q. And then -- so that's the -- the straw 14 buyer was the deed that was insured and then although 15 some of the documents we have seen filed there's also 16 this subsequent deed from the buyer to the buyer and 17 Capital Assets. 18 A. Uh-huh. 19 Q. And so was that again a usual event for 20 you to file -- to have a closing insure a buyer and a 21 lender for title insurance and then have a subsequent 22 transfer of the property in this joint venture? 23 A. You know, we had seen it. It was not 24 common, but frankly it didn't at that time scare me 25 much because I had invested in the '80s before the</p>	<p style="text-align: right;">Page 73</p> <p>1 A. They were I guess the mortgage broker. 2 Q. Did Mr. Kane work for National Home 3 Funding? 4 A. I understand that he did. I only found 5 that out later on after this was all done and over. 6 Q. So what was your understanding of Mr. 7 Kane in 1996 and 1997? 8 A. That he was the Cristo Property 9 Management guy that bought, rehabilitated and sold. 10 Q. And then at some point there was a suit 11 between National Home Funding and Coastal Title. 12 Correct? 13 A. Yes. 14 Q. And what was the basis of that lawsuit? 15 A. I don't recall. Probably be better to 16 ask Mr. McGowan exactly what that was. 17 Q. What happened with that lawsuit? 18 A. I know it was settled. 19 Q. And do you know the settlement terms? 20 A. I don't remember. It's a long time ago. 21 MR. KOTT: On that subject, I provided 22 this morning off the record to Mr. Magnanini a copy 23 of the release running from the plaintiff, Robert 24 Skowrenski, versus Commonwealth and Coastal to -- the 25 release runs to Commonwealth. I also provided him a</p>

19 (Pages 70 to 73)

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1 copy of the Stipulation of Dismissal filed with the
2 clerk as to Commonwealth.

3 MR. MCGOWAN: And I also provided to
4 Mr. Magnanini the release and the final stipulation
5 of dismissal in connection with that lawsuit as well.

6 MR. KOTT: Because we have no secrets
7 unlike other parties in this.

8 MR. MCGOWAN: Because we believe in full
9 disclosure.

10 MR. MAGNANINI: I'll keep my comments
11 off the record. If you can mark this.

12 (Coastal-2, Stipulation of Dismissal, is
13 received and marked for identification.)

14 Q. Mr. Agel, I would ask you to take a look
15 at what's been marked as Exhibit 2, and then I'll
16 have the court reporter mark Exhibit 3.

17 (Coastal-3, Stipulation of Dismissal, is
18 received and marked for identification.)

19 A. Okay.

20 Q. Mr. Agel, what I've shown you as Exhibit
21 2 is a Settlement and Stipulation of Dismissal in a
22 lawsuit entitled: Robert Skowrenski, II versus
23 Coastal Title Agency and Commonwealth Land Title
24 Insurance Company. And as Exhibit 3 the Stipulation
25 of Dismissal and Release in the same lawsuit.

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1 Exhibit 2 is as to Commonwealth and Exhibit 3 is to
2 Coastal. And you said you didn't recall the
3 substance of the lawsuit. Do you recall why the
4 lawsuit was settled?

5 A. Not offhand other than the fact that I
6 just wanted it over with.

7 Q. How much did Coastal pay -- on the
8 second page of the release it says that they -- Mr.
9 Skowrenski was paid \$325,000. How much of that did
10 Coastal Title pay?

11 A. None. That was from my carrier I
12 assume. I don't think I wrote a check.

13 Q. And then --

14 MR. MCGOWAN: Let me just say that this
15 was -- this was paid under a general liability policy
16 so Mr. Agel -- it's not like a malpractice policy
17 where he gets to okay it or understand it or
18 anything. It's a decision made not by him and really
19 not by me. It's made by the carrier.

20 Q. Flipping back to Exhibit 1, the Rule 26
21 Disclosure. So whatever payment was made by Coastal
22 Title was actually made by the policy of insurance
23 issued by Summit Risk Services?

24 A. Yes.

25 Q. Is that correct?

1 A. Yes.

2 Q. Okay. Do you know how much money, if
3 any, Commonwealth paid?

4 A. Not until I saw this. I don't even know
5 if that's what they paid. I don't know if there's
6 anything else but no.

7 Q. Was there any claim between or by
8 Commonwealth against Coastal to indemnify
9 Commonwealth for any money Commonwealth may have
10 paid?

11 A. No.

12 Q. Sorry for that convoluted question.

13 A. No problem.

14 Q. Were you ever deposed in that lawsuit?

15 A. No.

16 Q. And so prior to the problem with Mr.
17 Kane's property becoming public, had you done any
18 business with Mr. Skowrenski or NHP?

19 A. No.

20 Q. Did Coastal do any work with mortgage
21 brokers directly at that time.

22 A. Not directly at that time.

23 Q. It does so now?

24 A. Yes.

25 Q. And when did that start?

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1 A. Within the last three to five years.

2 Q. And then did Coastal have any
3 interactions with any appraisers? And this is the
4 1996, '97 time frame.

5 A. No.

6 Q. Had you ever met or spoken with Mr.
7 Richard Calanni?

8 A. No.

9 Q. How about Richard DiBenedetto?

10 A. No.

11 Q. James R. Brown?

12 A. No.

13 Q. Thomas Brodo?

14 A. No.

15 Q. Or Roland Pierson?

16 A. No.

17 Q. And you said you may have met Mr.
18 D'Apolito at some point?

19 A. Possibly but, you know what, it could
20 have been a picture in the newspaper because I
21 remember seeing his name when this started to break.
22 So if I had to say I met him it was just like a
23 chance meeting. It wasn't anything else.

24 Q. And then what companies did Mr. Kane own
25 that you knew of?

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 A. I knew of Cristo Property Management and 2 then he had a fictitious name, G.J.L. Limited. I 3 think it was limited. 4 Q. It was. Correct. 5 A. And I saw in some of the documents here 6 Oakwood Homes, but I don't ever recall seeing that in 7 any of my files, but it's because most everything 8 went through Cristo and G.J.L. so the ones I'm 9 familiar with are Cristo and G.J.L. 10 Q. Okay. In your files would you see if 11 there were second mortgages? 12 A. If they're recorded. If they're 13 recorded, yes. 14 Q. But as part of the closing process you 15 wouldn't normally see -- 16 A. No. 17 Q. Okay. 18 A. No, we were never at closings. 19 Q. And then were you familiar with an 20 entity called DEK Homes of New Jersey? 21 A. Yeah, I've seen that name. It could be 22 just from this stuff but I've seen it. 23 Q. Did you know if Mr. Kane was involved in 24 DEK back in the 1996 to mid 1997 time frame? 25 A. No.</p>	<p style="text-align: right;">Page 80</p> <p>1 Complaint filed by Walsh Securities. And I would 2 like you to take a look at that. 3 (Coastal-4, Answer to Fourth Amended 4 Complaint, is received and marked for 5 identification.) 6 Q. Mr. Agel, as I said, what's been parked 7 as Exhibit 4 is Coastal's Answer to Walsh Securities' 8 Fourth Amended Complaint, which was filed July 24 of 9 2009. I would ask you to take a look at this and let 10 me know if you have ever seen it before. 11 A. Possibly. I don't recall. 12 Q. Did you have any involvement with -- in 13 answering the complaint of Walsh Securities? 14 A. Possibly. I don't really recall though. 15 Q. You can flip back -- Mr. Agel the 16 questions I have are on page 16 of 28 if you look up 17 top under. There's a first separate defense. You 18 see that? Second, third -- 19 A. Yes. 20 Q. -- and fourth? The second separate 21 defense of Coastal alleges that recovery is barred by 22 the negligent conduct and the conduct of its agents, 23 employees and officers. What factual information 24 does Coastal have to support that defense? 25 A. The negligent --</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. How about an entity known as Dinaso & 2 Sons? 3 A. Yes, I recall that name. 4 Q. What was that? 5 A. That was one of Pepsny's clients that 6 was buying properties. 7 Q. And did they also rehabilitate and sell 8 as far as you knew? 9 A. I think so, yes. 10 Q. Did you ever meet anyone from Dinaso & 11 Sons? 12 A. No. 13 Q. Did you ever meet a man named John 14 Dinaso? 15 A. No. 16 Q. How about a man named William Epp? 17 A. No. 18 Q. Did you ever meet a man named Lawrence 19 Cuzzi, C-u-z-z-i? 20 A. No. 21 Q. Did you ever meet anybody who worked at 22 Capital Assets Property Management? 23 A. No. 24 Q. Mr. Agel, I'm going to have marked as 25 exhibit four Coastal's Answer to the Fourth Amended</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. McGOWAN: Of the plaintiff. 2 A. Of the plaintiff? Negligence of the 3 plaintiff? 4 Q. Right. 5 A. I don't know that I have anything in 6 writing. You know, it's -- I don't know. 7 Q. And then on the -- if you look on what 8 is listed as the third, fourth and fifth separate 9 defense it says that the Amended Complaint against 10 this defendant is barred by the act of its agent, 11 employees, and I believe it says "offers," but I 12 believe it's officers. On the third, fourth and 13 fifth defense. What -- again, same thing, what 14 factual basis does Coastal have to support those 15 affirmative defenses? 16 MR. McGOWAN: You're going to be able to 17 answer the question. Let me just object to the form 18 of the question. There's a million different things 19 that have occurred in this case factually and 20 otherwise and this gentleman may not be privy to. 21 Q. You're here just as Coastal's corporate 22 rep. That's all I'm asking. You don't -- you didn't 23 have to memorize everything that's occurred in the 24 case. What do you have now? 25 A. Other than the fact that employees and</p>

21 (Pages 78 to 81)

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1 officers of the company have been charged and found
2 or pled guilty to involvement in the scheme, to me
3 right then and there they were -- they through their
4 officers and agents are aware of the fraud.

5 Q. What officers of Walsh Securities
6 were --

7 A. DeMola and D'Apolito.

8 Q. Do you know --

9 A. And I believe there was another
10 processor up there that was found guilty or pled
11 guilty.

12 Q. Correct. Do you know if Miss DeMola was
13 an officer of Walsh Securities?

14 A. I believe she was.

15 Q. What is the basis of your belief?

16 A. That -- newspaper articles or some
17 things that I have read in this case.

18 Q. And was Mr. D'Apolito an officer of
19 Walsh Securities?

20 A. I don't think he was an officer. I
21 think he was an employee.

22 Q. Anything else, sir?

23 A. No.

24 Q. We're done with that pile of paper
25 there.

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1 the FBI in the summer of 1997. Were they copied by
2 the Ansell firm?

3 A. No, I think those were original files
4 that I turned over at that point. I either did that
5 or I gave them to Commonwealth. I don't recall, but
6 I'm pretty sure it all went to the FBI.

7 Q. And then in this litigation Fidelity had
8 produced about eight boxes of files, which I
9 understand came from Coastal.

10 A. Uh-huh.

11 Q. And did Coastal provide copies of its
12 files to Fidelity or send the originals to Fidelity?

13 A. I think we would have provided originals
14 and we would have kept the photocopy.

15 Q. What about for Commonwealth?

16 A. Same thing.

17 Q. So you sent the original files to the
18 title insurance company?

19 A. That's generally our procedure with a
20 claim so yes.

21 Q. When were you first notified of a claim?

22 A. Probably in the summer of '97. I guess
23 when people started to default on mortgages and
24 foreclosures started.

25 Q. And how was Coastal alerted that there's

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1 (Coastal-5, Plaintiffs' First Request
2 for Production of Documents to Defendant Coastal
3 Title Agency, is received and marked for
4 identification.)

5 Q. Mr. Agel, I ask you to look at what's
6 been marked as Coastal Exhibit Number 5, which is
7 Walsh Securities' First Request For Production of
8 Documents. That's dated August 15, 2008.

9 A. Okay.

10 Q. There's a whole bunch of legal
11 definitions and things. The requests I would
12 actually ask you to look at are on pages ten through
13 15.

14 A. Okay.

15 Q. You testified earlier that your files
16 were copied by your initial counsel, the Ansell firm?

17 A. Yes.

18 Q. And did they copy any other documents of
19 Coastal other than the files related to each of the
20 transactions?

21 A. I don't think so.

22 Q. And then did you produce any other
23 documents other than the files -- one question I
24 would ask you about that is: You said there were
25 some pending transaction files which you provided to

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1 a claim pending?

2 A. The attorney for whoever the claimant is
3 would send a letter to us and to the -- generally to
4 the title insurance underwriter at their
5 headquarters. It's clear in the policy how you file
6 a claim. The same in the closing service letter.

7 Q. What happens at Coastal when a notice of
8 a claim is received?

9 A. We contact the underwriter immediately.

10 Q. And then what happens?

11 A. We generally turn our file over to them.

12 Q. And then does Coastal participate in an
13 investigation of the claim?

14 A. To a certain extent. I mean, we would
15 cooperate and we -- if they need us to do some
16 research work or something like that we do it.

17 Q. But otherwise the claim process is
18 handled by the title insurance company?

19 A. Yes, either by their claims counsel
20 and/or their outside counsel.

21 Q. Was that process followed with these
22 Kane properties?

23 A. Yes.

24 Q. Were you interviewed by counsel for the
25 title companies?

22 (Pages 82 to 85)

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1 A. No.
 2 Q. Was anyone at Coastal interviewed by
 3 counsel for the title companies?
 4 A. No.
 5 Q. Did you speak with counsel for the title
 6 companies while they were investigating the claim?
 7 A. I don't recall. Possibly but I don't
 8 recall.
 9 Q. So other than -- after receiving the
 10 claim and turning over the original files, did
 11 Coastal have any involvement in investigating the
 12 claims related to the Kane properties?
 13 A. No. No, most of those claims were by
 14 lenders.
 15 Q. And do you know what the title companies
 16 did to investigate those claims?
 17 A. No.
 18 Q. Did Coastal keep a correspondence file?
 19 A. No, not separate correspondence files.
 20 Q. And you had a separate ledger system to
 21 record the payments in and transfers from the
 22 operating account to the trust account and payments
 23 out to the title companies?
 24 A. Well, we would have a check register or
 25 we had it.

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1 Q. Now it's all electronic?
 2 A. Now it's all electronic, yes.
 3 Q. Do you still have a copy of the check
 4 registers -- I didn't ask you that -- from 1996 or
 5 1997?
 6 A. In all likelihood, no.
 7 Q. What documents would you have from that
 8 time period, that '96 to '97?
 9 A. Relating to what?
 10 Q. Related to the business operations of
 11 Coastal Title.
 12 A. Tax returns probably.
 13 Q. Anything else?
 14 A. Not really, no.
 15 Q. Do you recall receiving this document
 16 request that's been marked as Coastal Exhibit 5?
 17 A. Not really, no.
 18 Q. Do you recall if you searched for any
 19 documents in response to this in 2008?
 20 A. We probably did. I mean, there's -- I
 21 have had correspondence and conversations with Mr.
 22 McGowan.
 23 Q. I don't want you to reveal what you
 24 discuss with your attorney.
 25 A. I'm just saying yes.

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1 Q. You have. Okay. Did Coastal produce
 2 any documents to its counsel in 2008?
 3 A. No, because we don't have much left in
 4 terms of that. In terms of what you're looking for
 5 here.
 6 Q. When Coastal received notice of the
 7 claims relating to the Kane Cristo Properties, did it
 8 do its own investigation?
 9 A. Back in '96, '97?
 10 Q. Yes.
 11 A. Investigation into what?
 12 Q. Into the claims that were being made.
 13 A. No, no, not really. Once it became a
 14 claim it shifted over to the underwriter, and if they
 15 had questions we would answer questions and -- but by
 16 turning our entire file over to them they've got
 17 everything that we did.
 18 Q. Was this the largest group of claims
 19 Coastal had received?
 20 A. Oh, yes.
 21 Q. And did you do any other investigation
 22 not related to the claims once you were put on notice
 23 of the problems with the Kane properties?
 24 A. Only what we discussed earlier in terms
 25 of trying to find out what was going on with these

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1 people, what they were doing and how they were
 2 getting these properties bought and sold the same
 3 day.
 4 Q. And as a result of that investigation
 5 did you make any notes or draft any sort of memoranda
 6 or anything like that?
 7 A. No.
 8 Q. Does Coastal have a document retention
 9 policy?
 10 A. Well, we have to keep our title files
 11 for 15 years after closing.
 12 Q. After closing. Okay.
 13 A. Which we do. And otherwise I retain my
 14 tax returns. I do have my -- all of my bank records
 15 for the last probably ten years at least. But there
 16 was a time period that we were scanning them, we had
 17 a computer crash and they are gone.
 18 Q. Do you have any bank records from the
 19 1996, '97 time frame?
 20 A. Probably not. They would have been
 21 scanned and lost in that crash.
 22 Q. The horrors of the electronic age.
 23 A. Uh-huh.
 24 Q. Is there any other document retention
 25 policy that Coastal has besides the 15 years, the

23 (Pages 86 to 89)

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1 bank records and the taxes?
 2 A. No. I should say none other than any
 3 correspondence or anything that happens in a file
 4 remains in that file and if it's scanned -- I mean,
 5 if somebody leaves their lunch order in a file it's
 6 scanned.
 7 Q. So all your files are now electronically
 8 maintained?
 9 A. Yes.
 10 Q. Did you scan any of the files that you
 11 had prior to your going electronic or getting a
 12 computer system?
 13 A. Yes.
 14 Q. You say you gave the original of those
 15 pending files to the FBI. Did you keep a copy
 16 anywhere?
 17 A. We -- it's possible. I don't know. I
 18 don't know if we had time to do that at that time.
 19 So we made a lot of photocopies over that summer, and
 20 I don't know if we made copies of those files.
 21 Q. Does Coastal have copies of any of those
 22 files still?
 23 A. The files that are -- that were pending,
 24 so to speak?
 25 Q. Right. That were pending.

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1 A. I don't know. There's no way for me to
 2 find out what files would be pending.
 3 Q. What about copies of the actual files
 4 that were produced in this litigation?
 5 A. We should. We should.
 6 MR. McGOWAN: But he doesn't.
 7 Q. When you say you should, do you know if
 8 you do?
 9 A. I need file numbers to verify it. These
 10 files -- the original files that were scanned are on
 11 disk and there's no electronic index of that so I
 12 can't tell -- I can't tell those files without having
 13 a file number. If you said to me: Do you have file
 14 number CT 18732, I can go to the disk that has that
 15 and I can look.
 16 Q. That's what I was going to say. If I
 17 sent Mr. McGowan a letter you can actually tell me if
 18 you have these files still?
 19 A. I can try to.
 20 Q. That's all I can ask is that you try.
 21 MR. McGOWAN: While you're looking, let
 22 me put on the record what I told counsel, sub rosa
 23 all counsel and the client, there were original files
 24 that were produced by us in connection with the
 25 Skowrenski matter. They were produced to counsel for

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1 Mr. Skowrenski in that case. And those files can no
 2 longer be had, and they were misplaced or otherwise
 3 made unavailable while they were in the possession of
 4 that attorney. I physically delivered them from
 5 Coastal Title Agency to that attorney who at the time
 6 was in this very building and --
 7 MR. MAGNANINI: Which shall remain
 8 nameless.
 9 MR. McGOWAN: Now they're gone. So when
 10 you ask him if he has the files, are you saying you
 11 might have those --
 12 THE WITNESS: Those I probably would not
 13 have on disk because we didn't do that project until
 14 after 2000.
 15 MR. MAGNANINI: How many files did you
 16 give during that litigation, Marty?
 17 MR. McGOWAN: Boxes.
 18 THE WITNESS: It was a lot of files.
 19 MR. McGOWAN: Remember you had all the
 20 boxes out in the hall.
 21 A. It was a lot.
 22 Q. Okay.
 23 A. Maybe six of those like that.
 24 Q. Those big banker --
 25 MR. McGOWAN: Like three or four long

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1 boxes of individual property files in the box.
 2 Q. Were they every file that Coastal had
 3 gotten title insurance for that involved National
 4 Home Funding?
 5 A. I don't know. It's possible but I don't
 6 know.
 7 Q. Has Coastal been involved in any
 8 lawsuits as a defendant since 1996 concerning
 9 allegations of fraud or breach of contract --
 10 A. No.
 11 Q. -- relating to title insurance policies?
 12 So other than this lawsuit and the Skowrenski lawsuit
 13 there's been no other ones?
 14 A. None.
 15 Q. Okay. When you said before, Mr. Agel,
 16 that you personally had been involved in six
 17 depositions, I believe is what you said. What were
 18 those -- why were you being deposed?
 19 A. Mostly expert witness.
 20 Q. In what --
 21 A. In fact, all expert witness. Cases
 22 where I am an expert witness.
 23 Q. In what capacity?
 24 A. On land titles.
 25 Q. That's all I have on this. Why don't we

24 (Pages 90 to 93)

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1 take a lunch break here and then we will come back.
2 (A discussion takes place off the
3 record).

4 (A lunch recess takes place.)

5 Q. Mr. Agel, one of the things I forgot to
6 ask you earlier is: What did you do to prepare for
7 the deposition as Coastal's corporate representative?

8 A. I met with Mr. McGowan and Mr. Aaron.

9 Q. Did you review any documents?

10 A. I got a letter that you sent requesting
11 documents but it came in very late.

12 Q. Did you have a chance to look for any
13 other documents in that letter?

14 A. Yes.

15 Q. Did you locate any?

16 A. No.

17 Q. Are you still looking for documents?

18 A. I only got it the other day so I have
19 not looked in the last -- I didn't look today.

20 Q. So --

21 A. If you go through it I can tell you what
22 I know I don't have and what I can't get.

23 Q. Let me just do that with you. I am not
24 going to mark it as an exhibit but, Mr. Agel, if you
25 take a look at the letter that I had sent, if you

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1 tell me which -- if you could just tell us what
2 numbers of categories that you may have responsive
3 documents?

4 A. Well, I can tell you number one, policy
5 and procedure manuals, I don't have any. I don't
6 have any.

7 Q. Do you have any now?

8 A. No.

9 Q. Actually, sorry about this. I was going
10 to ask this stuff later, but do you get any policy or
11 procedure manuals from the title companies?

12 A. They have them, yes, I'm sorry, I've got
13 those books. We rarely use them.

14 Q. And so how far back do the books go?

15 A. You get one when you sign and you never
16 hear from them again about it.

17 Q. And do you still have the book you would
18 have received from Commonwealth?

19 A. No.

20 Q. How about the one from Nations?

21 A. No.

22 Q. One from Fidelity?

23 A. No.

24 Q. And then I assume you got a new book
25 from Lawyer's Title.

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1 A. Probably, but, you know, that's -- these
2 are a long time ago so people don't use them. You've
3 got the agency agreements.

4 Q. Right. From Mr. Hayes and Mr. Kott.

5 A. I don't recall a termination letter
6 between us, between Commonwealth and Coastal. I
7 just -- I don't recall one at all and I'm sure there
8 was something but that was a mutual termination.

9 Q. You say mutual. Did you write a letter
10 to Commonwealth?

11 A. I don't recall.

12 Q. I believe -- because I think during the
13 Commonwealth 30(b)6 deposition their representative
14 had said she believed she saw a termination letter in
15 Commonwealth's file.

16 A. It could be. I just wouldn't keep it
17 this long. That I wouldn't keep this long.
18 Approved/disapproved attorney list. I don't recall
19 if they go back that far. This case might be the
20 genesis of approved and not approved attorney lists,
21 but if I had them I am under strict orders not to
22 share those with anybody.

23 Q. Where do you get them from?

24 A. They would come from the underwriter.
25 From either Commonwealth or Fidelity.

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1 Q. Again, when we did Commonwealth's
2 deposition they said that they had them -- their
3 approval or disapproved, I guess --

4 A. It was mostly a non-approved list is
5 what you would call it.

6 Q. A non-approved list?

7 A. Yes.

8 Q. Those were attorneys that they would not
9 issue insurance for?

10 A. That's right.

11 Q. Okay. And what I understood from
12 Commonwealth was they were chronological. They just
13 kept them -- they would add people to them year after
14 year.

15 A. Yes. And then they would take people
16 off too.

17 Q. If they became approved again?

18 A. Right.

19 Q. And then do you have the approved list
20 from --

21 A. No.

22 Q. -- 1996, '97?

23 A. No.

24 Q. Do you recall if Mr. Yacker was ever on
25 the -- put on the disapproved list?

25 (Pages 94 to 97)

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1 A. No, I don't recall, but I can tell you
2 that if he got on the list I would have made a call
3 to Commonwealth about it to find out why and whether
4 I can or cannot do business with him. They all had a
5 policy and -- had a policy that says: We will do
6 business with these people on a case-by-case basis.
7 Q. I assumed, maybe incorrectly, that if
8 someone was disapproved they were just off limits,
9 you would never do business with them?
10 A. Not necessarily.
11 Q. Okay.
12 A. I don't think he was ever on it because
13 I never recall making a phone call. He got on it
14 after.
15 Q. Right.
16 A. Yeah.
17 Q. And then -- but if someone was on the
18 disapproved attorney list, was it your -- Coastal's
19 decision to work with them or it was the title
20 company's decision?
21 A. It would be -- if I wanted to work with
22 them for some reason I would call and ask.
23 Q. And who would you call? The
24 underwriter?
25 A. I would call the underwriter. I would

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1 call, in Commonwealth's case, Nancy Koch.
2 Q. Who would you call in Fidelity's case?
3 A. Whoever counsel was at the time, say, Ed
4 Norton, Kevin Carins.
5 Q. If they said it was all right to work
6 with that attorney, then you could?
7 A. Yes, but, you know, in this case -- I
8 can only think of one case where I ever asked.
9 Something totally unrelated to this.
10 Q. And do you recall if Mr. Cicalese was
11 ever on the disapproved list?
12 A. After?
13 Q. After.
14 A. Certainly after. I would think not
15 before because I would have recalled making phone
16 calls or not do business with him.
17 Q. How long back do you keep the
18 disapproved lists?
19 A. I discard -- we keep them now
20 electronically, but I delete when I get a new one
21 because they're updated. They update the full list
22 and give you just a list of new attorneys. So I
23 would delete it or toss it when I get the new one.
24 Q. How often is that done?
25 A. Somewhat less than monthly. Probably I

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1 would say every other month, quarterly, at least
2 quarterly, I believe.
3 Q. All right. You said you are under
4 instructions not to disclose?
5 A. It's right in our memos that we get from
6 the underwriter, do not disclose.
7 Q. We won't ask you for those then. We
8 will discuss, if there's any relevance, from title
9 company's counsel. Okay.
10 A. Let's see. I have no -- I have the
11 correspondence with Walsh Securities or its
12 attorneys. Let's see. The communications -- the
13 title companies, you know, 99 percent of what we did
14 especially back then was on the telephone.
15 Q. Okay.
16 A. A little better now with e-mail.
17 Q. There's not any written record?
18 A. Right. I have no joint defense
19 agreements.
20 MR. MCGOWAN: I can personally stipulate
21 there's no defense agreement.
22 MR. KOTT: Can you read that back?
23 (The requested portion is read by the
24 court reporter.)
25 A. Coastal Title's file relating to agency

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1 relationship with -- to title insurance defendants,
2 that's the contract. That's the only thing. All
3 payments on premiums received. That's impossible. I
4 just don't have.
5 Q. The records from back then --
6 A. The records from back then, I don't keep
7 them that long. Same thing with the general ledger.
8 Once again I can't identify the title insurance
9 policies without file numbers because I don't have an
10 electronic record of that. I have not offered to pay
11 any settlement with anyone. I haven't offered to.
12 Q. By that I mean Coastal Title.
13 A. Coastal Title Agency has not -- you have
14 gotten the settlement agreement and I cannot put my
15 hands on our policy, you know, the E&O policy. I'm
16 sure --
17 MR. MCGOWAN: I think I will be able to
18 get that for you.
19 Q. According to the 26 disclosures your
20 attorneys have that so we will get that from them.
21 A. That's everything.
22 Q. Okay. Good. Other than this letter,
23 Mr. Agel, did you review any documents to prepare for
24 today's deposition?
25 A. No. We did review some of them -- you

26 (Pages 98 to 101)

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1 know, some of the title commitments that you had,
 2 that type of thing, not much though.
 3 Q. Did you speak to anybody at Coastal to
 4 prepare for this deposition?
 5 A. No.
 6 Q. It's always the problem, you take a
 7 break and you eat something and you think of things
 8 you should have asked. You were saying that --
 9 earlier that there were a couple of pending files on
 10 some of the Kane transactions. What did you mean by
 11 "pending"?
 12 A. Open files that they had not closed on
 13 purchasing or selling, properties that he was -- I
 14 guess you would call it his pipeline of properties
 15 that he was building up to fix and sell.
 16 Q. So the properties he had acquired but
 17 not closed on?
 18 A. Correct.
 19 Q. Were there any properties for whatever
 20 reason that Cristo or J.G.L. or one of Mr. Kane's
 21 companies had purchased and then sold and title
 22 insurance was never issued on?
 23 A. I don't recall. At the end we probably
 24 did not issue. Once this started to break we stopped
 25 issuing -- I was under instruction: Just don't issue

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1 anything, don't issue policies. So there are
 2 probably files that did close that were done properly
 3 probably that we didn't issue policies on, but that
 4 was kind of when all hell broke loose and we were
 5 producing documents for people.
 6 Q. What then happens to -- because as I
 7 understood the title process once the closing
 8 occurred Coastal was sent money, I assume at that
 9 point, by, say, Mr. Cicalese?
 10 A. Uh-huh.
 11 Q. For the closing protection letter and
 12 the title insurance. What happened to that money if
 13 it was not -- if the title policy was not issued?
 14 A. We still -- right away when we did the
 15 -- when we did our deposit we would still immediately
 16 break out the premium for the underwriter so they
 17 got -- they would have I think gotten paid because
 18 when we got paid -- if we got paid we would assign a
 19 policy number to it and it already had a number on
 20 the closing protection letter so that money was
 21 separately -- that was held separately and, you know,
 22 I actually don't even have that account anymore
 23 because we don't remit that way anymore. We just we
 24 remit everything electronically, and we remit the
 25 minute that we're paid because the computes give you

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1 a policy number and all of that right away so that's
 2 all done electronically.
 3 Q. Now, what I was wondering was: Were
 4 there any, in other words, I guess, premiums for the
 5 title insurance or was it a premium for the closing
 6 protection letter? Is that what you called it or
 7 just a payment?
 8 A. I don't think they call it a premium. I
 9 can't remember what it's called, but I don't think
 10 it's called a premium.
 11 Q. Were there any premiums for title
 12 insurance policies, for lack of a better term,
 13 payment for the CPL that were -- that were made to
 14 the title insurance companies for policies that were
 15 not issued?
 16 A. I don't know. I don't know.
 17 Q. Do you recall if there were any payments
 18 to the title insurance companies for the CPL but not
 19 a payment for a title insurance policy since that
 20 policy was not issued?
 21 A. That couldn't happen. We remit at the
 22 same time. Those get remitted together.
 23 Q. Okay. Do you recall: Was money ever
 24 returned to Coastal from either Commonwealth or
 25 Fidelity for policies that weren't issued?

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1 A. No.
 2 Q. One of the other things you said or you
 3 testified to earlier was after you had this large
 4 batch of closing documents that had not been filed
 5 you received what you thought were two other batches,
 6 I think was your term, of documents that needed to be
 7 filed. When did you -- when did Coastal receive
 8 those documents?
 9 A. I don't know. I don't even know if it
 10 was two. I know that we got a batch of documents
 11 that did not get recorded because things fell apart
 12 in terms of their being able to fund things. So
 13 those documents went -- those original documents went
 14 to the FBI.
 15 Q. Okay. Do you recall who forwarded you,
 16 you being Coastal, the documents?
 17 A. No.
 18 Q. And who was going to fund the filing for
 19 all those documents?
 20 A. Well, my assumption at the time was that
 21 it would be Kane because he did the last group that
 22 we asked him to record, but, you know, it never got
 23 that far because things fell apart.
 24 Q. And you said Mr. Kane paid by check for
 25 the total amount of the filing. Do you recall was it

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1 a company check or a personal?
 2 A. It would have been a company check, I am
 3 sure. Which company I don't know.
 4 Q. That was my next question. Did they pay
 5 Coastal for anything else?
 6 A. No.
 7 Q. Did -- when Coastal was filing those
 8 variety of documents, did Mr. Kane ever instruct
 9 Coastal not to file any of the mortgages?
 10 A. No.
 11 Q. Were mortgages filed with the closing
 12 documents?
 13 A. Meaning that group that I recorded?
 14 Q. Yes.
 15 A. Yeah, it was deeds and mortgages and --
 16 it was deeds and then purchase money mortgages, yeah.
 17 Q. We have seen on some -- some we have,
 18 some mortgages we haven't found.
 19 A. I'm thinking that was not something that
 20 I recorded and some of them could be that those were
 21 properties that he closed on before he sold it
 22 because I think when he did that he paid cash for the
 23 properties. He didn't mortgage a lot of those
 24 because he did do some properties where he bought
 25 them and took title before he flipped them to the

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1 last buyer.
 2 Q. I've seen that. Did Mr. -- or did you
 3 ever have any discussions with Mr. Kane about where
 4 he got the money to purchase these properties?
 5 A. No. Well, actually it might not have
 6 been him, I don't think it was him, it was Pepsny but
 7 you can see where it came from. You -- and that's
 8 classic with anyone that flips properties if they do
 9 them simultaneously, you use B's money, B's closing
 10 money to pay A's closing money. That still happens
 11 today.
 12 Q. Outside of this group of Kane
 13 transactions with this -- with the flip, has Coastal
 14 been involved in any other flips that had any type of
 15 fraud in them?
 16 A. You know, I think that there was one
 17 that we insured. It was some attorney in Elizabeth
 18 maybe and a mortgage company. I don't remember their
 19 names but Target Mortgage maybe was the name of it.
 20 They did -- they had some issues but, you know, those
 21 just closed. That was just -- that was not -- there
 22 was never a claim involved and never a lawsuit
 23 involved with that, but there was an attorney, I
 24 think his attorney name was Kloud, who was disbarred
 25 over that. But that would be it.

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1 Q. Speaking of disbarred attorneys, have
 2 you had any -- when was the last time you spoke to
 3 Mr. Yacker?
 4 A. Probably the day I asked for the
 5 recording fees back in 1997.
 6 Q. I understand he's working in the title
 7 agency business.
 8 A. I heard that. I heard that. That used
 9 to be a haven for disbarred attorneys. Don't ask me.
 10 I don't sign them. That's their clients.
 11 Q. But you haven't spoken to him. The
 12 other follow up was: You had said about the joint
 13 venture deeds between the buyer and -- Capital Assets
 14 and the buyer that you had some familiarity with them
 15 because of your investing in the 1980s, and I think
 16 you had said that up until they changed the tax laws,
 17 which I believe occurred in 1986?
 18 A. Yes.
 19 Q. And then prior to this group of Kane
 20 properties and that ended with this joint venture
 21 deed, had you had any or had Coastal had any
 22 experience with joint ventures like this, deeding
 23 away 60 percent of the security interest in that
 24 intermediate time between the change of the tax laws
 25 in '86 and '96?

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1 A. Not to my knowledge. Not that I
 2 recollect, no.
 3 Q. And then did the joint venture deeds
 4 cause Coastal any concern because -- this is a
 5 layman's question. It seems to me you're impairing
 6 the security of the lender by giving away 60 percent
 7 of the property.
 8 A. No, we were insuring that they had a
 9 first lien. They had a first lien. We don't insure
 10 the enforceability of the mortgage. We don't insure
 11 anything beyond its first lien status. So we -- they
 12 had first liens so, no. There was really -- we
 13 didn't really question it. I thought it was odd but
 14 we're insuring first lien, they had first liens.
 15 Those deeds went on after the purchase money
 16 mortgages.
 17 Q. Did you have any discussions with the
 18 underwriters at Commonwealth or Nations/Fidelity,
 19 I'll call it, about the joint venture deeds?
 20 A. I don't think so.
 21 Q. Why not?
 22 A. Just didn't seem important at the time.
 23 Q. Because it was after --
 24 A. It was a post, it was post policy.
 25 Q. Do you recall if you received -- well,

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1 if you would have filed the joint venture deeds you
 2 would have had those in your files.
 3 A. If they were recorded with that group,
 4 yes, because those were really the only ones that we
 5 recorded. Up until that point Yacker was recording
 6 them. Or I assumed Yacker was recording them.
 7 Q. Do you recall any conversations with Mr.
 8 Yacker or Miss King in which they said that Mr. Kane
 9 had instructed them not to record the deeds and
 10 mortgages?
 11 A. No.
 12 Q. Mr. Agel, is there any due diligence
 13 involved on behalf of title companies before they
 14 sign an agreement with Coastal to be their agent?
 15 A. There should be. What they do I don't
 16 know, but I have not signed up with underwriters that
 17 just sent me contracts in the mail, which that has
 18 happened.
 19 Q. What information did Coastal provide
 20 Commonwealth before it became an approved agent?
 21 A. Probably E&O coverage. You know,
 22 Commonwealth was a good company, still is, probably
 23 E&O type coverage, filled out an application,
 24 probably gave them references, that type of things.
 25 We had an interview.

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1 Q. And then the same question for Nations.
 2 I guess that's who you signed up with initially.
 3 A. Yes. Actually that one we signed up
 4 with because the fellow that ran the northeast for
 5 them had been a former superior of mine at Lawyer's
 6 Title, and I don't remember the process but, you
 7 know, we did -- I had known him for ten, fifteen
 8 years before we signed up.
 9 Q. Was there anything additionally required
 10 when Nations became Fidelity by Fidelity?
 11 A. Probably just a contract amendment,
 12 change the name of the underwriter.
 13 Q. And then did Coastal perform any
 14 diligence on the title insurance company on the other
 15 side before becoming an agent?
 16 A. I wouldn't call it due diligence. I
 17 know who -- I've been doing this a long time. I know
 18 who the good underwriters are. I know what my
 19 requirements are because we do a large commercial
 20 business. I want underwriters with lots of assets.
 21 Q. Mr. Agel, Commonwealth-5 from the
 22 deposition of May 27, 2010 so I'll just use the same
 23 thing, and it's a document Bates stamped COM 0000001
 24 to 8.
 25 Mr. Agel, you said at that time -- I'll

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1 go to the end first -- was that Coastal's business
 2 relationship with Commonwealth was terminated -- I
 3 believe you said was a mutual --
 4 A. I believe so.
 5 Q. What was Coastal's reason for ending the
 6 relationship with Commonwealth?
 7 A. Dealing with Lawyer's Title.
 8 Q. Okay.
 9 A. To deal with Lawyer's Title.
 10 Q. To deal with Lawyer's Title?
 11 A. Yes.
 12 Q. Okay.
 13 A. And I think the reason they gave me on
 14 their end, which is normal, is that they had minimum
 15 remittance requirements and, you know, we weren't --
 16 I couldn't -- had no interest in meeting them because
 17 I was dealing with Lawyer's Title.
 18 Q. Okay. So when you terminated the
 19 relationship with Commonwealth, Coastal was using
 20 Lawyer's Title and Fidelity?
 21 A. Yes. We probably used Fidelity for a
 22 little while longer. We went exclusively with
 23 Lawyer's Title for a while, and I don't remember when
 24 that occurred.
 25 Q. Okay. I would ask you: On Commonwealth

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1 Exhibit 5, do you recognize this document?
 2 A. Yes.
 3 Q. And what is it?
 4 A. It's my agency agreement.
 5 Q. And then Paragraph 1 says that
 6 Commonwealth hereby designates and appoints agent as
 7 its representative or agent for the territory
 8 mentioned below under terms and conditions specified
 9 herein and it says: Freehold and the County of
 10 Monmouth. Did you do -- you issued title insurance
 11 policies for Commonwealth beyond Freehold and the
 12 County of Monmouth. Correct?
 13 A. Yes. This dealt with where you could
 14 have your office.
 15 Q. Okay.
 16 A. Office locations.
 17 Q. And your obligations to Commonwealth are
 18 contained in paragraph two?
 19 A. Yes.
 20 MR. McGOWAN: Bob, you can ask him any
 21 questions you want. The document will speak for
 22 itself, but you can ask him what his understanding is
 23 but that's the objection.
 24 Q. On -- if you turn to paragraph two,
 25 subparagraph F.

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1 A. Right.

2 Q. That appointed you as an agent to record
3 all papers that should be recorded, and you said
4 initially I believe this morning that at least
5 with -- as to the Kane Cristo Properties that you
6 believed the attorneys were recording the documents?

7 A. Correct.

8 Q. And then in 1996 and 1997 did Coastal
9 record documents for closings or was it usually done
10 by attorneys?

11 A. Normally done by attorneys. Some
12 attorneys would send the documents to us to record
13 for them. We would walk them into the County Clerk's
14 office for them since we're right here. We were
15 right here at the time. That paragraph that you're
16 talking about, 2F, deals with agents -- more with
17 agents that do closings.

18 Q. Okay. So you didn't think that applied
19 to Coastal?

20 A. If I were doing closings it would apply
21 to when I'm doing closings. It was always understood
22 between us and every agent, every north Jersey style
23 agent and their underwriter that we don't do
24 closings, so if we do the closing we comply with this
25 of course.

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1 Q. Okay. Let me ask that question then.
2 What percentage of purchases for which you issue
3 title insurance did Coastal file papers at the
4 request of the attorneys? And again this is back in
5 1996 and the first half of 1997.

6 A. It wasn't a large percentage I'm sure.
7 That came about -- us recording documents was as more
8 of a service to the attorneys. You know, another
9 service that we could provide. Our rates are
10 regulated. I am certainly not going to sell my good
11 looks so we try to sell service.

12 Q. Prior to that, that mass filing, had you
13 recorded any documents for Mr. Yacker?

14 A. No, I don't think so.

15 Q. And prior to the -- that filing that we
16 spoke about, had you filed any documents for Mr.
17 Cicalese?

18 A. I don't think so, no.

19 Q. And then once Mr. Cicalese was the
20 buyer's, for lack of a better term, attorney, did you
21 file documents for him?

22 A. I don't think so.

23 Q. But you're not sure?

24 A. I am not certain, no.

25 Q. Okay. Did Commonwealth ever contact

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1 Coastal and -- to determine whether you had not
2 forwarded the necessary documents to Commonwealth? I
3 don't know if I'm asking that right.

4 A. I understand. No, because really the
5 only documents we ever forwarded to them were the
6 policies and the closing service letters and any
7 endorsements to the policy that were issued.

8 Q. Okay. Would Coastal have done --
9 modified the documents in any way that it was filing
10 on behalf of the attorneys?

11 A. No. Other than putting our "Record and
12 Return" stamp on it, we would on -- we would have it
13 recorded and returned to us. Anything that we're
14 responsible for recording, we record and return to
15 our location to make sure it's recorded and done.

16 Q. Would Coastal ever put its stamp over
17 the lender's name so instead of it being returned and
18 recorded to lender it would come to Coastal?

19 A. Yes, absolutely, yes.

20 Q. Why was that?

21 A. Because if we're responsible for
22 recording we want the document returned to us, and
23 then we return it or we send it out to either the
24 attorney or it's possible we might have sent policies
25 directly to Walsh Securities. And what we would do

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1 is we would send the original policies with the
2 original documents to whoever they would go back to,
3 but if we're responsible for recording it comes back
4 to us.

5 Q. Okay. What happened with that large
6 filing of closing documents that Coastal did? Were
7 they all returned to Coastal?

8 A. Yes.

9 Q. And then what did Coastal do with them?

10 A. I believe they ended up with the FBI. I
11 think that's one of the things that we turned over.
12 I am certain that I got all of the -- if you want to
13 call it -- bookkeeping behind that to them, to the
14 FBI, and I am certain we still would have had those
15 documents probably.

16 Q. So even though they were recorded by the
17 county April 8th or 9th, you believe you didn't send
18 them back to either Walsh Securities or to the
19 attorney or --

20 A. The more -- I don't know. I couldn't
21 answer that with any certainty.

22 Q. But you could have turned them over to
23 the FBI?

24 A. That would be what I would figure we
25 did. Definitely.

30 (Pages 114 to 117)

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<p style="text-align: right;">Page 118</p> <p>1 Q. And same set of questions for the other 2 batch or batches of closing documents you received, 3 did Coastal file those? 4 A. I don't think -- that second batch, so 5 to speak, that did not -- they didn't get recorded. 6 I never got money for them. I was not advancing it. 7 Q. So at that point Coastal had those 8 documents -- 9 A. Correct. 10 Q. In its files and those were given -- 11 A. Those were definitely given to the FBI. 12 Q. Okay. Other than the original files you 13 sent to Commonwealth did Commonwealth ever request 14 documents relating to the Kane Cristo Properties from 15 Coastal? 16 A. I don't think so, no. 17 Q. Never during the time that these 18 purchase and sales were ongoing? 19 A. No, that never. 20 Q. What about Nations or Fidelity? 21 A. Same thing. 22 Q. On page three of subsection two is -- 23 subparagraph J, that's what you were discussing 24 before, that whenever you had questions or problems 25 deemed doubtful you would call the underwriters to</p>	<p style="text-align: right;">Page 120</p> <p>1 document retention because there's litigation or 2 there's a criminal proceeding or something like that. 3 A. I don't recall, but the only thing that 4 I would have thought about saving would be things 5 related to that case, to Cristo. 6 Q. Okay. 7 A. Files. 8 Q. That's why I was asking about this 9 register. Kind of tracking what was done when. 10 A. That's strictly giving you what file 11 number went with what policy. That's what a register 12 is. 13 Q. And then flipping over to page four, 14 subsection P, allows Commonwealth to examine or audit 15 all books and records. During the 1996 to mid 1997 16 did Commonwealth ever audit or request to audit 17 Coastal's books and records? 18 A. I don't recall but if they did it -- we 19 get audited on a regular basis by our underwriters. 20 It wasn't as prevalent but now it's done annually, 21 but it was done then. I couldn't tell you if it was 22 done during that time period. And their audit powers 23 were strictly on title insurance related matters. 24 Audit title files, escrow files, premium trust 25 accounts, that type of thing.</p>
<p style="text-align: right;">Page 119</p> <p>1 discuss it with the agents? 2 A. Yes. 3 Q. And then on further down there's 4 subparagraph N. 5 A. Uh-huh. 6 Q. And it says: "To maintain agent's file 7 register furnished by Commonwealth." Did Coastal 8 maintain such a register? 9 A. Yeah, that really is a policy register 10 we would get. When we would order policies we would 11 have to -- then we would have to order policy jackets 12 from them. They would give us a register and what we 13 would do is when we assigned the policy to a file we 14 would just write in that register the file number 15 that went with that policy. 16 Q. What happened to the register? 17 A. Oh, after a certain amount of time we 18 would have destroyed it. It meant nothing to us. 19 It's useless to us frankly. 20 Q. Did your initial attorneys ever discuss 21 retaining documents because of an ongoing civil suit 22 or anything like that. I don't want to know 23 what they told you. - 24 A. I understand. 25 Q. If you got a letter or memos like</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Not your internal business records or 2 anything like that? 3 A. No. 4 Q. Do you recall if there were any audits 5 conducted during that time frame by Nations or 6 Fidelity? 7 A. No. 8 Q. What was involved with an audit from the 9 title company? Would they come to your office or -- 10 A. They would come to the office. 11 Q. And they would review documents? 12 A. Yes, they would review my title files. 13 They would take a sampling of files and review them, 14 review the underwriting, review everything in it. 15 Just review the file, mostly the underwriting, to 16 make sure we are underwriting properly. 17 Q. And then what was the result of the 18 audit? Did you -- did they make recommendations to 19 you? Did you hear back from the title company? 20 A. Very rarely. Very rarely. Never any 21 bad reports. 22 Q. And on four, I guess it's subparagraph 23 T, it says not to do any business in the name of 24 Commonwealth except as specifically authorized herein 25 or otherwise expressly authorized by Commonwealth in</p>

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1 writing. What does that mean?

2 A. I couldn't hold myself out as being a
3 representative of Commonwealth Title for anything
4 other than the issuance of the title policy.

5 Q. What else could you hold yourself out
6 as?

7 A. I suppose I could probably try to do
8 something terrible and -- but I guess there are a
9 whole myriad of things, but I am not allowed to bind
10 my title insurance underwriters to anything other
11 than issuing a title policy.

12 Q. A policy. Okay. And then if you could
13 turn back to page three, Mr. Agel, it says
14 subparagraph L, the agent agrees to be solely liable
15 for all attorneys' fees, court costs, expenses and
16 loss or aggregate losses resulting from, and then
17 there's a little (a) and in parenthesis (fraud),
18 negligence, with a star, or MISCONDUCT OF AGENT, all
19 caps, its officers or employees in the performance of
20 its duties as AGENT of COMMONWEALTH, and agent and
21 Commonwealth are all capitalized, and then: Did
22 Commonwealth ever make a claim against Coastal under
23 the agreement under paragraph L?

24 A. No. There was a threat of a -- actually
25 it wasn't even a threat of that. I got a letter from

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1 them I think that said to put my carrier on notice
2 that they were coming after me and I made a big stink
3 about it and they backed off.

4 Q. When was that?

5 A. I don't recall when. During relatively
6 early stages of this, I recall that, after the claims
7 started coming in.

8 Q. Do you still have a copy of the letter?

9 A. No.

10 Q. Do you recall who it was from?

11 A. That would have been from Nancy Koch.

12 Q. Did you converse with Miss Koch about
13 that?

14 A. No, no, I went over her head. I wasn't
15 a happy camper.

16 Q. Who did you speak to at Commonwealth?

17 A. It wasn't Commonwealth. I went to
18 Lawyer's Title because they bought Commonwealth by
19 the time that all happened so I went directly there.

20 Q. Who did you speak to at Lawyer's Title?

21 A. His name was Ron Owen.

22 Q. What was his position?

23 A. He was a senior vice president and I
24 think he ran the northeast.

25 Q. And what did he tell you?

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1 A. "I'll take care of it." I was a very
2 big remitter and, you know, my -- I said to them: Do
3 you want to lose a half million dollar a year agent
4 over this and their answer was no.

5 (A discussion takes place off the
6 record).

7 Q. Before you filed -- you made that -- I
8 don't know what to call it -- the filing of those
9 various papers that had not been filed by Mr. Yacker
10 did you speak with anyone at Commonwealth, or I'm not
11 sure who it was, Nations or Fidelity at that point in
12 time, about doing the filing?

13 A. I don't recall. It is very possible.
14 It's very possible, and in all likelihood it would
15 have been just Commonwealth.

16 Q. Why just Commonwealth?

17 A. I did most of my business through them
18 at the time.

19 Q. Okay. Another thing I noticed, and we
20 weren't quite sure how the business was handed out,
21 but the loans at issue here are -- Mr. Kott or Mr.
22 Hayes, one of the two will object, but they're about
23 50/50, like half of them were Commonwealth and then
24 there's a Nations/Fidelity, but so you would have
25 more likely called Commonwealth than Fidelity is what

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1 you think?

2 A. I think so, yeah. It's possible I
3 called Fidelity but they -- at that time they didn't
4 have great -- they didn't have as much -- I don't
5 want to say control but they didn't have -- their
6 underwriting standards at the time were not as
7 stringent, put it that way.

8 Q. This is the natural lawyer tendency.
9 When you divided up the loans knowing Fidelity's
10 underwriting standards weren't as stringent, would
11 Coastal send certain loans to Fidelity as opposed to
12 Commonwealth?

13 A. No.

14 Q. On page five of the Exhibit 5 from
15 Commonwealth, Mr. Agel, there's a subparagraph in the
16 middle of the page which says: To pay agent as
17 compensation on transactions originated by agent for
18 services hereunder a commission on the premium paid
19 for title insurance on the following basis, and then
20 there's a: See Exhibit A. Did Coastal negotiate
21 Exhibit A with Commonwealth?

22 A. No, that was pretty standard with every
23 title agency in the state. And they're pretty
24 standard to this day.

25 Q. So the 20 percent filed rate was a

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<p>1 standard remittance back then?</p> <p>2 A. Yes, pretty standard, yeah.</p> <p>3 Q. Is it the same now?</p> <p>4 A. Now we remit a little less actually.</p> <p>5 Q. Why is that?</p> <p>6 A. Ask your -- ask the underwriters. They</p> <p>7 came in and they sold us.</p> <p>8 Q. What does the last sentence of Exhibit A</p> <p>9 mean?</p> <p>10 A. With title insurance you pay a premium</p> <p>11 on the higher of the mortgage amount or purchase</p> <p>12 price, and then there's a charge of \$20 to issue</p> <p>13 either the owner's or mortgage policies, which in</p> <p>14 most case is a mortgage policy, simultaneously with</p> <p>15 the owners. So you pay \$20 just for a work charge,</p> <p>16 so to speak, to type that policy.</p> <p>17 Q. On page five, subparagraph E, it states:</p> <p>18 To pay agent as compensation for services in</p> <p>19 producing commitments, binders and final reports of</p> <p>20 title, conducting settlements or otherwise servicing</p> <p>21 matters of title insurance originating by or through</p> <p>22 the offices of Commonwealth a fee to be agreed upon</p> <p>23 between Commonwealth and agent.</p> <p>24 A. If they had an office that was out of</p> <p>25 state and had a customer buying something and --</p>	<p>1 there's a document, it's titled: TRW Title Insurance</p> <p>2 of New York, Inc. Was that the entity with which</p> <p>3 Coastal first became a title agent?</p> <p>4 A. Yes.</p> <p>5 Q. And then at some point did TRW Title</p> <p>6 Insurance of New York become Nations Title Insurance?</p> <p>7 A. That's correct, yes.</p> <p>8 Q. And then -- so beginning on Bates stamp</p> <p>9 13017 there's an agreement assigning the agency</p> <p>10 agreement from Nations Title Insurance of New York to</p> <p>11 Fidelity National Title Insurance Company.</p> <p>12 A. On 17?</p> <p>13 Q. Right.</p> <p>14 A. Yeah.</p> <p>15 Q. So that's when as, you said before,</p> <p>16 Nations and Fidelity had merged?</p> <p>17 A. Correct, yes, where Fidelity purchased</p> <p>18 Nations.</p> <p>19 Q. Purchased Nations, okay. And then</p> <p>20 turning back to the first page, Bates stamp FY 13000</p> <p>21 on -- under Paragraph 2A2 there's that requirement to</p> <p>22 maintain the policy register, again, similar to that</p> <p>23 of Commonwealth.</p> <p>24 A. Exact same.</p> <p>25 Q. And so -- that's what I was going to</p>
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<p>1 somewhere in New Jersey, say, that office could</p> <p>2 contact me and ask me to do the work, and then they</p> <p>3 would negotiate a rate with me that might be better</p> <p>4 than the 80/20 split. They might say: I'll give it</p> <p>5 to you if you give me 40 percent.</p> <p>6 Q. Okay.</p> <p>7 A. That was so I could do business with</p> <p>8 other -- that's standard language. You will find</p> <p>9 that in every contract at that time. So I could do</p> <p>10 business with another Commonwealth office somewhere</p> <p>11 else. A direct operation.</p> <p>12 Q. Did any of the Kane, Cristo purchase,</p> <p>13 sales come to you via another Commonwealth office?</p> <p>14 A. No.</p> <p>15 Q. What about any from Nations or Fidelity?</p> <p>16 A. No.</p> <p>17 (Coastal-6, Fidelity Agency Agreement,</p> <p>18 is received and marked for identification.)</p> <p>19 Q. Mr. Agel, I'll ask you if you have seen</p> <p>20 before what we've marked as Coastal Exhibit 6?</p> <p>21 A. Yes.</p> <p>22 Q. And what is it?</p> <p>23 A. It's my agency agreement with Fidelity</p> <p>24 National Title.</p> <p>25 Q. And on -- starting on Bates stamp 13008</p>	<p>1 ask. Did you maintain it in the same --</p> <p>2 A. Exact same fashion.</p> <p>3 Q. -- fashion? Okay. And then under</p> <p>4 Section 2, subparagraph A, subsection 7 --</p> <p>5 A. Right.</p> <p>6 Q. -- it says: The agent Coastal was</p> <p>7 required to obtain Fidelity National Title's approval</p> <p>8 prior to funds being held under escrow and indemnity</p> <p>9 agreement. Were there any -- why was that? Let me</p> <p>10 ask that first.</p> <p>11 A. If there was an open judgment say that</p> <p>12 was being contested by the seller, you know, we would</p> <p>13 try -- still try to accommodate people where if</p> <p>14 they're contesting it, say, they're appealing it, so</p> <p>15 we would ask for an escrow to be held. If a judgment</p> <p>16 is say \$10,000 we might say if we hold \$20,000 you</p> <p>17 have to have it cleared up by a certain date. So I</p> <p>18 would need to clear that with any underwriter or this</p> <p>19 one specifically, put it in the contract, but we</p> <p>20 would always -- if we ever held an escrow we contact</p> <p>21 our underwriter to see what they thought.</p> <p>22 Q. What would happen if the -- in your</p> <p>23 example a judgment was not cleared up by the time you</p> <p>24 needed to have it cleared up?</p> <p>25 A. There have been times that we've used</p>

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1 that money and paid the judgment off. We might
2 deposit it in court. We would do any number of
3 things. Maybe we would give them more time if they
4 showed that they were diligently pursuing their
5 appeal type of thing.

6 Q. And would you have issued title
7 insurance --

8 A. Yes.

9 Q. -- at the closing and you just hold this
10 in escrow --

11 A. Correct.

12 Q. -- until it was cleared up? Was that
13 done -- earlier you had testified that at least
14 initially the properties that Mr. Kane and his
15 companies were obtaining were distressed, I think was
16 your word, and you had said foreclosures, tax sales,
17 all sorts of things like that. Did Coastal obtain
18 escrow money from Mr. Kane, Mr. Yacker or Mr.
19 Cicalese or Mr. Pepsny even to hold until any of
20 those problems were cleared up?

21 A. No, I don't recall, but if it was
22 anybody it would be -- it would have been Pepsny
23 because his closings were the ones where you would
24 have to clean up the title, so to speak, but we
25 didn't hold -- up until a few years ago we never

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1 held -- title companies never really held a lot of
2 escrow money. We never held -- it would say hold in
3 escrow, but the attorneys would generally hold the
4 escrow.

5 Q. Oh, okay.

6 A. As per agreement those -- we could
7 demand payment or deposit in court, that type of
8 thing.

9 Q. Would you -- if the attorney was going
10 to hold the money in escrow would you still have
11 called the title company's underwriters?

12 A. Yes.

13 Q. And then how would you certify or check
14 that the agent or the attorney was actually holding
15 the money in escrow?

16 A. Well, you would sometimes take it at
17 face value that they're an approved attorney. They
18 generally will give us -- I don't know if they did
19 them -- but a cover letter that says: We closed,
20 here are the documents, here's the check, we're
21 holding \$20,000 in escrow for this item.

22 Q. Okay. Then under -- on page 13000
23 still, Section 2B, there's a list of negative
24 covenants, which the agent agrees not to do certain
25 things. Number five says: Alter any title assurance

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1 or other form furnished by company or commit company
2 to any particular interpretation of provision or
3 terms of title assurance. Why is that in this
4 agreement?

5 A. I think that's probably in the end a
6 better question for a title insurance representative.

7 Q. The title company? What did you
8 understand that Section 5 to mean?

9 A. Well, on title insurance forms they're
10 all approved -- policies, commitments, endorsements
11 are all approved by the Department of Insurance.
12 Every company files their forms with the Department
13 of Insurance and you can't deviate from those forms.
14 So I interpret that as saying I can't alter the terms
15 and conditions of a title policy, title commitment,
16 closing service letter.

17 Q. Any of that?

18 A. I have to issue exactly the form that's
19 filed with and approved by the Department of
20 Insurance.

21 Q. Okay. And in the subsection three or
22 section three it says: Responsibility of Company,
23 which I assume from the contract is Fidelity National
24 Title?

25 A. Correct, yes.

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1 Q. And so Subsection F says: The company
2 shall furnish its insured closing service letter to
3 each of agent's qualified customers requesting same.
4 What did that mean to you?

5 A. In the very beginning the closing
6 service letters were issued directly by the
7 underwriter. We would have to call and ask for them.
8 It became so burdensome with an agency our size that
9 they would give us a supply where that -- where you
10 would see sometimes signed by two people, signed by
11 an employee of Fidelity and then signed by generally
12 me. But that's -- in the beginning when closing
13 service letters first came about we were -- we had to
14 call and ask for them.

15 Q. When you say, "in the beginning," when
16 was that?

17 A. I couldn't tell you. It's a long time.
18 Man, I'm telling you it's a long time.

19 MR. MAGNANINI: Off the record.

20 (A discussion takes place off the
21 record).

22 Q. And then three, Subsection A, says: The
23 company shall furnish to the agent without cost the
24 then currently approved forms of title insurance
25 which agent is authorized to issue hereunder. So

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1 that's what -- that's all the forms that the title
2 company --

3 A. Yeah, the policies, endorsements,
4 commitment jackets, things like that.

5 Q. And then Subsection B says that the
6 company shall provide the agent with any relevant
7 company manuals, underwriting bulletins and/or
8 instructions which may now or hereafter be issued by
9 the company. And that's what you said you got the
10 initial manual when you signed up?

11 A. Yes.

12 Q. Did the title insurance companies issue
13 underwriting bulletins?

14 A. Yes.

15 Q. How did you receive those?

16 A. Then either by fax or mail.

17 Q. What did Coastal do with them?

18 A. The important ones we would keep and get
19 them into our computer system, if we had it at the
20 time, which was word processing probably at that
21 time. And otherwise -- the memo itself would get
22 tossed. We would say -- for example, if it was a new
23 requirement for -- as things changed over the years,
24 the transfer tax changes, mansion tax, things like
25 that, we would create that into a -- one of our

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1 standard exceptions that we would put into the
2 commitment.

3 Q. Into the commitment itself?

4 A. Yeah.

5 Q. How was -- for Fidelity and Nations --
6 Fidelity National, what were the underwriting
7 bulletins? Were they designated with numbers or did
8 they have date and months on them or how did they
9 come to you?

10 A. Probably both.

11 Q. Do you remember receiving underwriting
12 bulletins during the 1996, mid '97 time frame?

13 A. We probably got some.

14 Q. Do you recall what the topics were?

15 A. No.

16 Q. And then C says: The company is
17 responsible for remitting payment of all premium
18 taxes. What does that mean?

19 A. There's a premium tax in New Jersey.
20 I'm sure in every state. So out of that 15 percent
21 that I would remit to them they would have to pay the
22 premium tax to the State of New Jersey. It's like a
23 sales tax.

24 Q. It just alleviated the agent from having
25 to make the payment?

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1 A. Yes.

2 Q. Okay. And then D is: Determine all
3 underwriting questions submitted by the agent.

4 A. Right.

5 Q. And that's what we had discussed. Were
6 all the questions you submitted to Nations/Fidelity
7 or Commonwealth telephonic or verbal?

8 A. Telephone, yes.

9 Q. Section 6 deals with allocation of
10 losses. Did Fidelity or Nations make any claim
11 against Coastal as a result of the -- this litigation
12 or any other claims?

13 A. No.

14 Q. Okay. On any -- I understand from
15 counsel for the title insurance companies that after
16 this civil litigation was filed and the various
17 criminal investigation was going on there were
18 several claims made by other entities, either
19 Banker's Trust or Temple Inland entities, which may
20 have held mortgages either because they were put in
21 securities or before Walsh Securities had repurchased
22 them. Was Coastal involved in any of the
23 investigation of the claims process responding to any
24 of those claims?

25 A. Not really, no.

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1 Q. When you say not really --

2 A. Just getting files to the -- to
3 Commonwealth or Fidelity. That's all. We didn't
4 have any other dealings with them on that, on those
5 claims.

6 Q. What happened when you terminated your
7 agreement with Fidelity National?

8 A. We went our separate ways.

9 Q. Did you return all of the documents to
10 them?

11 A. Yeah, we would -- we would continue to
12 close out files that we had with them, issue
13 policies, and then when we were through all that we
14 would return the inventory.

15 Q. And then after you had terminated your
16 agency agreement with them, did Fidelity ever contact
17 Coastal and ask for anything, any other documents,
18 information, anything like that?

19 A. You know, I don't recall that, no.

20 Q. And then if you could turn to page
21 13005, down at the bottom it says: "Agent." Is that
22 your signature?

23 A. Yes.

24 Q. And then on this -- on page 13005 it
25 says "Rider" and it says under 5A, "Compensation."

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1 It says: If during any calendar year agent remits an
 2 amount greater than, and \$100,000 is written in
 3 there, company will pay agent a bonus of five percent
 4 of the net remittance over, I assume it's, \$100,000?
 5 A. Of remittance, yes.
 6 Q. Did you negotiate that?
 7 A. You know --
 8 Q. There's a series of numbers that are
 9 crossed out.
 10 A. No. I think that was volunteered.
 11 Q. And then I didn't see a bonus provision,
 12 I'll call it, in the Commonwealth agreement. Was
 13 there such a bonus for remittance over a certain
 14 amount with Commonwealth?
 15 A. No.
 16 Q. So I'll have to ask the lawyer question.
 17 So wasn't it in your economic interest to assign more
 18 policies to Fidelity since they were going to pay you
 19 a bonus over a certain amount?
 20 A. You know, that's kind of complicated
 21 because Commonwealth was a much better company and,
 22 you know, I'm selling a product and, no, not
 23 necessarily. I would rather get a little less for a
 24 better product and make it up on volume, so to speak.
 25 And, no, no, not necessarily.

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1 Q. Okay. Thank you, Mr. Agel, for today.
 2 It's three o'clock. We have to break now.
 3 MR. KOTT: Mr. Magnanini, will you be
 4 the custodian of the original exhibits today and send
 5 them?
 6 MR. MAGNANINI: I will send them to
 7 everyone.
 8 (The deposition is adjourned at 3:02
 9 p.m.)
 10
 11
 12 _____
 13 ROBERT AGEL
 14 Subscribed and sworn to before me
 15 this _____ day of _____, 2010.
 16
 17 _____
 18 Notary Public
 19
 20
 21
 22
 23
 24
 25

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CERTIFICATE.

1
 2
 3 I, JANET BAILYN, a Notary Public and
 4 Certified Court Reporter of the State of New Jersey,
 5 do hereby certify that prior to the commencement of
 6 the examination ROBERT AGEL was duly sworn by me to
 7 testify the truth, the whole truth and nothing but
 8 the truth.

9 I DO FURTHER CERTIFY that the foregoing
 10 is a true and accurate transcript of the testimony as
 11 taken stenographically by and before me at the time,
 12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a
 14 relative nor employee nor attorney nor counsel of any
 15 of the parties to this action, and that I am neither
 16 a relative nor employee of such attorney or counsel,
 17 and that I am not financially interested in the
 18 action.
 19
 20

 21 Notary Public of the State of New Jersey
 22 My commission expires February 3, 2013
 23 License No. XI00970

24 Date: June 28, 2010
 25

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